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Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Report on Bill 1: *Human Rights Act*

Chair: Mr. Brendan Bell, MLA

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Standing Committee on Social Programs

OCT 22 2002

HON. ANTHONY (TONY) WHITFORD
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Dear Mr. Speaker:

The Standing Committee on Social Programs is pleased to provide our report on our review of Bill 1, *Human Rights Act* and commends it to the House.

Sincerely,

Brendan Bell
Chairman

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Report of the Standing Committee on Social Programs on the Review of Bill 1, *Human Rights Act*

Introduction:

The Standing Committee on Social Programs is pleased to report on its review of Bill 1, *Human Rights Act*.

Instituting a comprehensive human rights organization is fundamental to the prevention of discrimination and promotion of equality in our society. Human rights legislation plays a key role in promoting respect, dignity and equal participation of all our citizens. It is a statement on our commitment to international human rights instruments and is the vehicle through which we promote and enhance equal opportunity for individuals by focussing on the elimination of discrimination.

With the exception of the Northwest Territories and Nunavut, every jurisdiction in Canada has enacted comprehensive human rights legislation to protect citizens from discrimination. Currently, the *Fair Practices Act* governs human rights protections in our jurisdiction. A review of the *Fair Practices Act* demonstrates that the current regime in the NWT is far from comprehensive. As a result, the Northwest Territories has not received an exemption under section 66 of the *Canadian Human Rights Act*, which means that the federal legislation continues to apply in the NWT. For instance, many provisions in the *Canadian Human Rights Act* govern employees of the Government of the Northwest Territories.

The *Fair Practices Act's* deficiencies have provided the impetus for the introduction of Bill 1, *Human Rights Act*. The proposed human rights legislation creates a comprehensive code for human rights promotion and protection in the territory. It now defines discrimination, offers greater protection through the expansion of the "prohibited grounds", is wider in its application than its predecessor and creates a Human Rights Commission to deal with complaints.

In particular, Bill 1 creates a legislative scheme to address discrimination in the delivery of services, employment, tenancy agreements, and other important areas of everyday life. By expanding the prohibited grounds and through the creation of the Human Rights Commission and the adjudication panel, Bill 1 brings the NWT up-to-date in human rights protection.

Background to Bill 1, *Human Rights Act* Review Process

Bill 1, *Human Rights Act* received Second Reading in the Legislative Assembly on February 22, 2002 and was referred to the Standing Committee on Social Programs for review.

Prior to this however, the development of a *Human Rights Act* was the focus of significant consultations by the Department of Justice. The Department advised us that in September and October 2000 a preliminary discussion paper on a *Human Rights Act* for the Northwest Territories was widely distributed for discussion and comment. This document was sent to 16 organizations that were thought to have an active interest in human rights issues and it was further distributed to 38 aboriginal organizations across the Territories.

In November 2000 the first draft of the *Human Rights Act* was tabled in the Legislative Assembly.

Following this, a brochure on the tabled *Act*, as well as the draft Bill itself were again broadly distributed to an expanded list of the interested parties. This list included 115 individuals and organizations, including aboriginal governments, non-governmental organizations, band councils and municipal councils.

In the summer of 2001 community consultations were conducted on behalf of the Department of Justice in 10 communities. As well, specific consultation meetings were conducted with approximately 30 representatives of municipal, aboriginal, labour and other organizations and societies.

As a result of the input received from these consultations, changes were made to the *Act*, including:

- It was requested that a definition of what constitutes discrimination be included in the *Act*. As a result, a number of interpretative sections were added on this point;
- It was recommended that a duty to accommodate be included in Bill 1 so that all individuals have the capacity to have their needs accommodated without discrimination based on one of the prohibited grounds. The revised Bill makes specific reference to the duty to accommodate in several sections of the *Act*;
- It was recommended that the Director of Human Rights need not be a lawyer and this change was incorporated into the existing draft;
- It was suggested that the application of the *Act* be extended to include domestic workers. The current *Fair Practices Act* does not include protections for domestic workers; Bill 1 has been revised to provide domestic workers with the same protection as all other workers covered by the *Act*; and

- There was concern that the original draft provided the Director of Human Rights with too much authority. In response, in the revised Bill the Director is no longer a member of the Human Rights Commission but sits as Secretary, is answerable to the Commission and answerable procedurally through the appeal process.

These are but a few of the recommendations which were received, assessed and in many instances added to the Bill before the legislation was introduced and referred to the Committee for consideration.

The task of the Standing Committee on Social Programs was to review Bill 1 in the context of human rights legislation across the country, and in particular to hear the views and suggestions of residents of the Northwest Territories.

Months prior to the hearings we contacted non-governmental organizations, communities, aboriginal governments and organizations in writing to invite all interested parties to participate in our review and provide their input.

Advertisements outlining our proposed review process and soliciting comments from all northerners were placed in all northern newspapers in April 2002 and again in July 2002. Public service announcements and media advisories were also broadcast in advance of the public hearing dates in each location.

To prepare for the public hearings, the Standing Committee on Social Programs met on several occasions to discuss background research material. The Standing Committee conducted public hearings on Bill 1 in Inuvik, Fort Smith and Yellowknife from September 4 to September 12, 2002.

While the number of responses and submissions were less than anticipated, the Standing Committee was impressed with the quality and depth of the presentations and written submissions presented to us.

Preamble

The Committee considered whether the preamble should be amended to refer to the international agreements entered into by Canada on equality and human rights.

The preamble provides the public with an indication of the purpose and the objectives of the legislation. It can also be used as an interpretative tool to assist decision-makers in their application of the statute.

During public hearings, presenters requested that the preamble be amended to recognize the international agreements to which Canada is a signatory. While most presenters were pleased with the current reference to United Nations *Universal Declaration on Human Rights*, a few of them felt that it was not a sufficient statement on our government's commitment to the protection and promotion of human rights.

Suggestions included expanding the preamble to make reference to the various international instruments on human rights, and to include language that makes it clear that the Legislative Assembly is responsible for human rights in the Northwest Territories. The Committee was also asked to clarify the role of aboriginal rights in our society.

The Committee suggested an amendment to the preamble to provide for more inclusive language, which makes clear links between the rights protected by the legislation and the responsibilities of our society to protect those rights.

The Committee put forward a motion to amend the preamble. The motion passed and received approval of the Minister of Justice. Consequently, the preamble has been amended to reflect the goals set out above.

Aboriginal Rights

Many presenters appearing before the Committee were concerned about the impact of Bill 1 on aboriginal rights and land claims agreements. Significant concern arose over the applicability of the *Human Rights Act* to aboriginal communities, and in particular about the scope of clause 2. Many presenters did not view the protection of individual rights in human rights legislation as automatically conflicting with the collective rights of aboriginal peoples; however, they wanted some assurance that aboriginal rights would be protected in the presence of such a conflict.

The *Constitution Act, 1982* provides constitutional protection to aboriginal rights and treaty rights in Canada. Clause 2 of the *Human Rights Act* provides

> "Nothing in the Act shall be construed so as to abrogate or derogate from the protection of existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in clause 35 of the *Constitution Act, 1982*"

The Yukon *Human Rights Act* provides similar protection to aboriginal rights. Both Bill 1 and the Yukon *Human Rights Act* attempt to satisfy public concerns about the impact of human rights legislation on aboriginal rights in each territory. Notably, the constitutional protections contained in section 35 of the *Constitution Act, 1982* and the applicable case law make it clear that provinces and territories cannot affect the constitutional rights of aboriginal peoples in Canada.

It was generally understood that clause 2 was intended to be a non-derogation clause to protect aboriginal rights; however, its application remains unclear. While, most presenters were supportive of Bill 1, they are concerned about the extent to which the collective rights of aboriginal peoples conflict with individual rights. Two other presenters, for the same reason, did not support the legislation at all.

Presenters commented on the fundamental differences in the approach to "rights" amongst aboriginal communities and non-aboriginal communities in the NWT. Bill Erasmus, National Chief of the Dene Nation explained how aboriginal rights are tied to the land and to the collective wellbeing of the community of which one is a member, whereas human rights legislation is based on the rights of the individual. Mr.Erasmus expressed general support of Bill 1; however, he questioned why the wording in clause 2 differs from that used in clause 3, which deals with rights and privileges associated with denominational schools in the territory.

Chief Erasmus is also concerned about how the *Human Rights Act* will apply to future aboriginal governments. He encouraged the Committee to create flexible legislation that anticipates the creation of future aboriginal self-government arrangements. Noting that future aboriginal governments may want the *Human Rights Act* apply, Mr. Erasmus sought clarification on the applicability of Bill 1 to current and future aboriginal governments.

Richard Nerysoo of Inuvik expressed concern that the government may use the *Human Rights Act* to undermine land claims agreements despite the inclusion of clause 2. He urged the Legislative Assembly to ensure that it is serious about not abrogating or derogating from aboriginal rights through Bill 1 or any other legislation. Mr. Nerysoo supported the introduction of human rights legislation. He emphasized that his concerns about protecting the collective rights contained in land claims agreements should not be interpreted as a lack of support for the protections provided to individual rights in the *Human Rights Act*. In his view, collective rights are not a reason to override individual rights; both are interrelated. However, he stressed that the government must meet its land claims obligations, and that it should not use the *Human Rights Act* or any other legislation to undermine land claims rights.

A related issue raised at the public hearings was whether Bill 1 could provide aboriginal communities with any assistance in the recognition and implementation of their rights. The Committee heard about the struggles of aboriginal people for recognition of their aboriginal and treaty rights. The Committee also heard that many aboriginal people do not believe that the government is living up to its land claims or treaty obligations, and people wanted to know if their communities could use Bill 1 to implement those rights.

Finally presenters wanted to know whether the *Human Rights Act* protected them from discrimination within their own communities, such as when some band members receive preferential treatment over others.

Bill 1 is intended to provide protection to all people experiencing discrimination based on any of the prohibited grounds in areas of everyday life that fall within territorial jurisdiction. Aboriginal persons who feel that they are being denied access to services, accommodations or employment within the NWT can make a complaint to the new Human Rights Commission.

Due to the division of powers created under the *Constitution Act, 1867*, aboriginal governments fall within the jurisdiction of the federal government. Bill 1 is territorial legislation, and does not apply to aboriginal governments. For instance, because band councils fall under federal jurisdiction Bill 1 will not apply. However, anyone experiencing discrimination in areas of public life that fall under the jurisdiction of the federal government can seek assistance from the Canadian Human Rights Commission.

The Committee sought clarification from the Minister of Justice on the underlying purpose of clause 2. Through our discussions, it is evident that the purpose of clause 2 is to provide a clear statement that aboriginal and treaty rights cannot be infringed by the *Human Rights Act*. Therefore, clause 2 is there to let the public know that Bill 1 does not supersede existing aboriginal and treaty rights. The protection afforded by clause 2 is not "frozen in time", but rather is intended to extend to future aboriginal and treaty rights.

The *Human Rights Act* does not provide aboriginal communities a vehicle to enforce their existing aboriginal rights, nor does it provide a mechanism for the recognition of rights not yet realized. The Committee encourages the government and aboriginal communities to work together to ensure the full implementation of aboriginal and treaty rights in the NWT.

In response to these concerns, the preamble of Bill 1 has been amended to recognize and affirm the protection of aboriginal and treaty rights in the Northwest Territories.

Disability

The definition of disability in Bill 1 was the subject of much discussion. The Committee is concerned that the current definition is not sufficiently clear with respect to the protections it creates. In particular, the Committee is concerned with the inclusion of "perceived" and "predisposition" in the definition of disability.

Some presenters advocated for a narrower definition, while others sought an expanded definition. Others felt that a more clearly articulated definition is required. Elaine Keenan-Bengts, one of three Fair Practices Officers, was concerned because the current definition does not make specific reference to alcohol and drug dependencies.

A number of presenters thought that by providing a partial list of ailments, disfigurements and infirmities that the legislation is limiting the possibility of adjudicators and courts to recognize new and emerging disabilities. The representative from the NWT Council of Persons with Disabilities stated that the current definition would create misunderstandings because people may think that the list of ailments and disabilities in subsection (a) is exhaustive. She suggested that the Committee consider using a definition that is similar to the one used in the *Canadian Human Rights Act*.

Others felt that the definition of disability was too broad in scope because it includes "perceived disabilities" and a "predisposition" to disabilities. "Perceived" disabilities created some confusion; for instance, the current definition does not make it clear as to whom is doing the "perceiving".

Also, it was pointed out that the use of the term "handicap" in the definition of disability in Bill 1 is outdated and should be amended accordingly.

The addition of "perceived" disabilities in Bill 1 is a reflection of the current case law on disabilities and its availability in other jurisdictions. Both Ontario and Nova Scotia incorporate perceived disabilities into their human rights legislation. Ontario's *Human Rights Code* includes disabilities that a person is "believed to have or have had". Nova Scotia's *Human Rights Act* applies to "actual or perceived" disabilities.

Recent decisions from the Supreme Court of Canada have affirmed the role of "perceived" disabilities in the analysis of what constitutes a disability. In *Quebec (Commission des Driots de la personne et es droits de la jeunesse) v. Montreal (City)* (hereinafter referred to as *Mercier*) (2000) the Supreme Court of Canada stated that the courts should adopt a multi-dimensional approach to interpreting human rights legislation. This requires courts to analyze disabilities from both an objective and subjective perspective. According to the court in *Mercier* discrimination on the basis of a perceived disability, whether there is an actual disability of not, will be considered unlawful.

The current definition of disability in Bill 1 reflects the principles articulated by the court in *Mercier*. With respect to the inclusion of "alcohol and drug dependency", the Committee is of the view that the case law indicates that the current definition will be interpreted in a manner that includes addictions to drugs and alcohol.

The Committee believes that changes are required to address some of the concerns raised at the public hearings. The Committee wanted it made clear that the list of examples provided in subsection (a) is not exhaustive, and is there to provide examples of the types of physical disabilities contemplated by the legislation.

The Committee proposed that the definition of disability be amended to clarify the meaning and scope of "perceived" and/or "predisposition to" disabilities and to make clearer that subsection (a) is not an exhaustive definition of the physical disabilities covered by the *Act*.

The Bill was amended to incorporate these suggestions. The reference to "handicap" has also been removed from the *Act*.

Analogous Grounds

The Committee considered whether clause 5(1) of the *Act* should be amended to include "analogous grounds" of discrimination. "Analogous grounds" is another way of saying "similar or same" grounds. Adding it to the *Act* empowers adjudicators to deal with complaints of discrimination that are based on grounds that, although not explicitly recognized in the legislation, should be prohibited because they are the same or similar to those currently listed in clause 5(1).

Both the NWT Federation of Labour and Egale Canada support the inclusion of "analogous grounds" into Bill 1. The Committee heard that by incorporating analogous grounds into clause 5 the legislation would provide adjudicators with sufficient flexibility to recognize new grounds of discrimination as they arise. One suggested methodology is to amend clause 5 to incorporate the language from section 15 of the *Canadian Charter of Rights and Freedoms*.

Presenters told the Committee that the significant Supreme Court of Canada jurisprudence in this area would temper the concerns over the uncertainty created by including "analogous grounds" in the *Act*.

The Committee raised this issue with the Minister of Justice. Through our discussions, the Committee has concluded that including "analogous grounds" into the legislation is not appropriate at this time. We have concerns over how such a provision would apply, particularly over its impact on the private sector. Unlike Bill 1, the *Charter* applies only to government. Unlike the *Charter*, the NWT human rights legislation will be easier to amend to incorporate new and emerging grounds of discrimination.

Therefore, the Committee determined that an amendment to incorporate "analogous grounds" into Bill 1 is not essential at this time.

Social Condition

The Committee considered whether the definition of social condition could be amended to provide for greater certainty in the application of it as a prohibited ground of discrimination. The purpose of including social condition as a prohibited ground of discrimination is to protect those who suffer discrimination as a result of being a part of a socially or economically disadvantaged group.

The Committee was interested to hear the views of the public about the inclusion of social condition in the list of prohibited grounds of discrimination. The public consistently supported its inclusion in the *Human Rights Act*.

The NWT Council for Disabilities, the National Anti-Poverty Organization, Status of Women Council, Egale Canada and the NWT Federation of Labour were among the presenters who supported the reference to social condition in Bill 1.

Of the presenters in support of "social condition" being part of the *Act*, a few of them are concerned that the current definition is unnecessarily narrowed by the requirement that the complainant be part of a "socially identifiable" group. The National Anti-Poverty Organziation is concerned with the possible strict interpretation that this ground may receive from the courts, citing Quebec case law as an example of this narrow approach.

Other presenters are concerned that the current definition is ambiguous. One presenter was opposed to including "social condition" in the prohibited grounds because it creates too much uncertainty and is difficult to apply in practice. This presenter requested an amendment to refer to "net source of income" or "poverty" rather than using social condition.

One presenter requested that the reference to "illiteracy" in the definition of social condition be changed to "levels of literacy" to accord with current language used to describe deficiencies in literacy.

The addition of social condition in Bill 1 addresses economic inequality in the Northwest Territories. Its inclusion in Bill 1 places the Northwest Territories ahead of most other jurisdictions in Canada in protecting residents from discrimination.

The Committee agrees that "social condition" is an imprecise term that will, over time, become unambiguous through interpretation by adjudicators and courts. However, the uncertainty created by its inclusion is far outweighed by the potential that the ground of social condition has to advance equality rights in our territory. The Committee believes that other terms, such as "source of income" or "receipt of social assistance", do not sufficiently protect residents from discrimination that is based on the complex socio-economic factors encompassed by the term social condition.

Canadian citizens sometimes face discrimination on the basis of their socio-economic status in the delivery of services, rental accommodations and employment. By including social condition as a prohibited ground, the Northwest Territories is able to provide assistance to those suffering discrimination because of their membership in a disadvantaged group. For instance, a single parent with a low income and several children may be denied access to accommodations because of his or her status as a low-income single parent. Our legislation would provide a remedy to this person, if the other party could not show that he had a *bona fide* justification for the discrimination.

Although Quebec is the only jurisdiction in Canada to include social condition in its legislation, several jurisdictions in Canada do provide protection on the basis of "source of income" or "receipt of social assistance" or "social origin". The federal government, the Northwest Territories, Nunavut and New Brunswick are the only jurisdictions in Canada not to provide some protection on the basis of socio-economic status.

More recently, however, the Canadian Human Rights Review Panel conducted an extensive review of the issues surrounding the inclusion of social condition as a prohibited ground of discrimination in the *Canadian Human Rights Act*. In the end, the Review Panel recommended that the federal legislation be amended to include "social condition" as a prohibited ground of discrimination. After much consideration, the Standing Committee on Social Programs determined that the current definition should remain, with one minor change.

Recommendation:

The Standing Committee on Social Programs recommends that the reference to "illiteracy" in Clause 1 be changed to "levels of literacy".

Gender Identity

A number of presenters expressed general support for the inclusion of sexual orientation in the *Human Rights Act*. They also supported an amendment to the legislation to include "gender identity" as ground for protection. Although the most detailed submissions on gender identity were from Egale Canada and OutNorth, many other presenters appearing before the Committee expressed their support for extending human rights protections to include "gender identity".

The Committee was told that protection on the basis of "gender identity" is required because of the discrimination faced by transgendered residents of the Northwest Territories. OutNorth described gender identity as "how one perceives one's sex", noting that many people feel that they were born into the wrong body. Gender identity is distinct from one's sexual orientation.

The inclusion of "gender identity" as a prohibited ground of discrimination in our human rights legislation will be a first in Canada. Notably, the Canadian Human Rights Act Review Panel recommended that the federal government amend the *Canadian Human Rights Act* to include gender identity in the list of the prohibited grounds. The Panel cited the serious harm to those affected as a rationale for adding it to the federal legislation and recommended that the federal government recognize in statute what has been already been recognized in case law.

Even though no other jurisdiction provides explicit protection on the basis of gender identity, some provinces do provide similar protection through case law. In particular, tribunal decisions from British Columbia and Quebec have interpreted the ground of "sex" in a manner that provides protection from discrimination based on gender identity. Ontario has created a comprehensive policy that allows for complaints to be made based on gender identity under the ground of "sex".

As noted at the beginning of this report the fundamental purpose of human rights legislation is to prohibit discrimination and to promote equality so that *all* members of our community can participate freely in everyday life. Recognition of gender identity as a prohibited ground of discrimination falls squarely within this purpose.

Although some have argued that this protection is already available through case law, the Committee believes that it is more useful to be explicit about the types of discrimination the *Act* aims to prevent. Furthermore, by including it in the legislation, the Committee believes that we are furthering the educative goals of the *Human Rights Act*.

Recommendation

The Standing Committee on Social Programs recommends an amendment to clause 5(1) and to the preamble to include "gender identity" as a prohibited ground of discrimination.

Place of Residence

The Status of Women Council requested that the legislation be amended to include "place of residence" as a prohibited ground of discrimination.

The Committee received a request to amend the legislation to include "place of residence" as a prohibited ground of discrimination. The Status of Women Council reported that such an addition is necessary to protect people who are denied services because of their residency. It was argued that adding "place of residence" to the legislation would provide protection for residents who move from one community to another and who are denied services or access to programs because of their move.

"Place of residence" is not included as a prohibited ground in any other jurisdiction in Canada. Although Committee Members feel that there are some residents that may face discrimination in services, accommodations and facilities, we are concerned that including "place of residence" in Bill would detrimentally affect the ability of our government to administer regionally based programming.

Therefore, the Committee is unable to recommend the inclusion of "place of residence" as a prohibited ground of discrimination.

Language

The Committee considered whether it is necessary to include "language" as a prohibited ground of discrimination. Notably, the only jurisdiction in Canada to provide explicit protection on the basis of language is Quebec.

The Status of Women Council requested that "language" be added as a prohibited ground of discrimination in clause 5 of the *Act*. Their concern is that discrimination based on language is not sufficiently covered elsewhere in Bill 1.

After due consideration, it is the Committee's view that language rights in government services are adequately protected under the *Official Languages Act*. "Ethnic origin" has been added as a prohibited ground of discrimination, therefore providing some protection where the language discrimination is related to ethnic origin.

Political Belief, Political Association and Family Affiliation

The Committee considered whether the protection against discrimination based on political belief, political association and family affiliation should be extended beyond employment to include discrimination in the provision of services and tenancy and other areas covered by Bill 1.

A number of presenters supported the extension of protection from discrimination based on one's political association or belief to include all areas of everyday life covered by the *Human Rights Act*. The Status of Women Council and others supported an equivalent extension for "family affiliation". The Committee heard that some residents, particularly those in smaller communities, feel that they are being discriminated against because of their family affiliation. They stated that the discrimination they experience is not limited to employment, but also occurs in other areas, such as housing.

The Status of Women pointed out that "political belief" is protected under the *Universal Declaration on Human Rights*. Another presenter pointed out that discrimination because of a person's political belief or association can occur in accommodations, facilities and services as easily as it can in employment. The Committee heard that by not providing protection in these other areas the legislation is condoning discrimination in other contexts, including the provision of services or rental accommodations.

The Committee understands that clause 7(2) was added to Bill 1 during the public consultations held by the Department of Justice. It is unclear why the protections from discrimination based on "political association" and "political belief" were not included in the general prohibitions in clause 5. The protection from discrimination in employment based on "family affiliation" is unique to the Northwest Territories, and has been included to address concerns over difficulties in small close-knit communities.

Seven provinces and the Yukon Territory include protections for political beliefs or associations. However, there have been few complaints made on this ground in those jurisdictions. Currently, it is unclear to the Committee why the protection against discrimination based on political belief, political association and family affiliation has not been included in the general prohibitions in clause 5.

Recommendation:

The Standing Committee on Social programs recommends that clause 7(2) be deleted and that the grounds of "political belief", "political association" and "family affiliation" be added to clause 5.

Criminal Convictions

The Committee was asked to consider an amendment to clause 5 to prohibit discrimination on the basis of a criminal conviction that is "unrelated to the employment, service or accommodation" or alternatively that the current reference to criminal convictions "for which a pardon has been granted" be deleted.

Currently, clause 5 protects residents from discrimination that is based on a criminal conviction for which a pardon has been granted. A few presenters pointed out that the reference to "for which a pardon is granted" is unduly restrictive because it does not protect people with a criminal record who have not received a pardon.

The Yellowknife Women's Centre told the Committee that most people with criminal convictions are vulnerable to discrimination because they lack the necessary pardon. The representatives from the Yellowknife Women's Centre requested that clause 5 be amended to prevent discrimination based on criminal convictions not relevant to the job. In their view, failing to provide protection for all people whose criminal convictions are not related to employment leads to recriminalization of people who have already served their sentences. Furthermore, they noted that many of our residents (more so than in other jurisdictions) have had some interaction with the criminal justice system, resulting in a higher number of persons with criminal records.

The Status of Women Council advocated for a similar approach asking that the legislation protect from discrimination based on a criminal conviction that "have no bearing on the employment or service being sought".

There was some discussion over the accessibility of the pardon system to residents in the Northwest Territories. It currently takes over two years for the National Parole Board to process pardon applications.

The Committee agrees that many of our residents may have criminal convictions for which a pardon has not been granted. However, we are concerned about the implications of expanding this protection to include criminal convictions "not relevant to the job or service". During our discussions, we were unable to reach a consensus on this issue.

As noted in the report of the Canadian Human Rights Act Review Panel, six jurisdictions do not offer any protection for persons with a criminal conviction or charge. Three jurisdictions prohibit discrimination on the basis of a pardoned conviction, while four others prohibit discrimination based on a conviction where the conviction is not relevant to the job or service.

While the Committee does not believe that this issue requires us to hold off on passing of Bill 1, it is an important issue that warrants further study. Therefore, we make the following recommendation.

Recommendation:

The Standing Committee on Social Programs recommends that the Department of Justice study the implications of expanding the current protections with respect to criminal convictions, and submit a discussion paper to the Legislative Assembly outlining whether or not it is necessary to amend the legislation.

"Hate" Material

The Committee was asked to amend clause 13 to include "hate" materials and to extend the protection from discrimination in publications to electronic mediums. The Committee heard that the publication of hate materials is harmful to members of our communities. The Yellowknife Women's Centre suggested that the Committee consider adding a provision similar to that provided in the Saskatchewan *Human Rights Code* to prohibit the publication of hate speech. This legislation also extends the prohibition to include electronic and broadcasting media.

Currently, British Columbia, Saskatchewan, Alberta and Canada prohibit the publication of hate materials. The Committee is of the view that it would be useful to extend the prohibitions in clause 14 to include material that is "likely to expose" members of our communities to "hatred or contempt".

Broadcasting and the Internet are both within the federal jurisdiction. In particular, broadcasting falls under the authority of the Canadian Radio-Television and Telecommunications Commission, which has regulations dealing with the broadcasting of discriminatory material. The federal government is currently studying the regulation of hate speech over the Internet.

Therefore, the Committee passed a motion to amend clause 14 to include the publication of "hate" materials.

Harassment

The Committee considered whether the prohibition against harassment based on the prohibited grounds should be extended to include all forms of harassment.

A number of presenters made recommendations to improve the protections in clause 14. Several presenters requested that clause 14 be amended to remove the requirement that the harassment be related to a prohibited ground of discrimination so that it covers all personal harassment.

The Status of Women Council highlighted the devastating effects of harassment in the workplace. They pointed out that harassment comes in many forms and may not be directly related to a prohibited ground of discrimination. However, harassment not directly related to a prohibited ground listed in clause 5(1) is not covered by the *Act*. They also requested that the *Act* create obligations for employers to provide a workplace free from harassment, including providing education programs.

Other presenters suggested that the *Act* explicitly refer to "sexual harassment" to make it clear that clause 14 prohibits that form of harassment. Another presenter suggested that a definition of sexual harassment be added to clause 5(3) of the *Act*.

The Committee agrees that harassment can be devastating and has detrimental effects on the individual in his or her participation in everyday life. However, no other jurisdiction in Canada has extended harassment provisions to include personal harassment.

Although the Committee does not believe that substantial revisions are required, we do believe that the legislation would benefit from a definition of harassment. Defining harassment provides the public with a clearer idea of what conduct is prohibited.

The Committee passed a motion to amend clause 14 to include the following definition:

> "harass", in respect of an individual or class of individuals, means engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome by the individual or class".

Adverse and Direct Discrimination

A request was made to remove the distinction maintained between direct and adverse discrimination in the *Act*.

Recent Supreme Court of Canada jurisprudence on discrimination indicates that it is no longer necessary to maintain a distinction between adverse and direct discrimination. This means that discrimination analysis is the same regardless of whether the discrimination is direct or adverse in nature. The unified test for discrimination created by the Supreme Court of Canada is reflected in the legislation of Ontario, Manitoba and the Yukon Territory.

Therefore, a motion to amend clause 7(5), 8(3), 10(2), 11(2) and 12(2) to remove the reference to direct and adverse discrimination was passed by the Committee.

Commission Composition

The Committee considered several recommendations on the composition of the Commission, how Commission members should be appointed and what qualifications they should have.

In every community in which the Committee held public hearings, we were advised that membership on the Human Rights Commission must be independent from the government and must be representative of the population of the Northwest Territories. Presenters consistently suggested that the Commission membership be representative of the NWT population; however they differed in their approaches to achieving representation.

Three presenters requested that the Commission should be comprised of 50% women, or that gender parity be a primary goal of the Legislative Assembly. A few other presenters advocated for regional representation on the Commission. The Status of Women and OutNorth both recommended that the members be selected from various sectors representing disadvantaged groups, such as women, persons with disabilities, aboriginal people, and workers.

The NWT Federation of Labour suggested that there be 7 Commission members selected from specific sectors in the NWT. They suggested that the Commission be comprised of 1 labour representative chosen by the Federation of Labour, 1 non-governmental organization representative, one Elder chosen by the Legislative Assembly, 1 Aboriginal member and 1 Legislative Assembly nominee. The remaining two Commission members would be open nominees. They also request that gender parity be a goal in the selection process.

The Committee solicited the views of the presenters on whether nominees would represent their "sector" or not. Most presenters who answered this question stated that Commission members were not there to represent sectoral interests, but to promote human rights in the NWT. However, in OutNorth's view, representation would be best achieved by appointing persons with experience in being disadvantaged.

Several presenters requested that the term of the Commission members be extended to promote independence from the Legislative Assembly. The Committee was also asked to amend clause 18 to allow the Commission members to choose their own Chairperson.

The Committee also heard that Commission members should have more than an "interest in" and "sensitivity" to human rights as required in clause 16(3). One suggestion is that the Commission members have experience with human rights issues within the diverse cultural composition of the NWT.

The Committee believes that members of the Commission should not be chosen to represent particular sectoral interests. Rather, the Commission members are there to educate the public about human rights, to promote the objects of the *Act* and to provide support for the development of human rights in the NWT. As Richard Nerysoo of Inuvik aptly stated the job of Commission members "...is not about representing individual regions or groups, it is about maintaining and protecting human rights and ensuring that the process has integrity and independence, even from members of the Legislative Assembly."

The Committee agreed that the qualifications of the Commission members should be more clearly stated in the *Human Rights Act*. The Committee has recommended that having "experience in" human rights be added as a qualification in clause 16(3). However, the Committee encourages the Legislative Assembly to take a flexible approach in determining what is relevant "experience".

The Committee does not agree that more Commission members are required. Bill 1 permits the appointment of 3 – 5 Commission members, allowing for regional representation in the appointment process if desired.

The Committee passed a motion to amend the length of Commission members' terms to four years. This will ensure that the terms of the Commission members will exceed that of the Legislative Assembly. Clause 17(2) has been amended to reflect this change.

The Committee also passed a motion to amend clause 16(3) to include a requirement that the members of the Commission have "experience in" human rights. This change has been incorporated into Bill 1.

Clause 18 has been amended to allow the Commission members to choose their own Chairperson. The Committee recommends that the Commission members create policy guidelines with respect to the length of term of the Chair.

Selection Process:

Almost all of the submissions made to the Committee requested that the Human Rights Commission appointment and selection process be transparent to avoid appointments being made based on "politics", rather than on merit. Several suggestions were made as to how transparency may be achieved.

The Yellowknife Women's Centre recommended that the Legislative Assembly create a hiring committee that would select Commission members. OutNorth suggested that appointments to the Commission be made from various sectors of the Northwest Territories. In their view, the Legislative Assembly should seek nominations from the disadvantaged groups that the *Human Rights Act* aims to protect to create a "pool" of nominees. The Commission members would then be selected from the pool created during the application process. Any subsequent members would be chosen from the same pool. Expressing concerns over the ability of the Legislative Assembly to choose a representative Commission, OutNorth requested significant public participation in the selection process.

The Committee agrees with the public that Commission members should be representative of the population of the Northwest Territories. One possible approach is to create a "screening" committee made up of representatives of the Legislative Assembly and members of the public. This group would be responsible for accepting and screening nominations recommended for appointment to the Human Rights Commission. The Committee believes that public participation in the selection process will enhance public confidence in the Human Rights Commission.

Currently, no other jurisdiction in Canada sets out the selection process in the statute itself. Although all jurisdictions have a similar appointment process as the one included in Bill 1, none set out the mechanisms by which Commission members will be chosen. The rationale for not including a particular selection process in the legislation is to allow the Legislative Assembly to create a flexible selection process to appoint members that meet the needs of the jurisdiction.

In order to ensure public confidence in the Human Rights Commission, transparency should be fostered through public participation in the membership selection process. Therefore:

Recommendation:

The Standing Committee on Social Programs strongly recommends that the Legislative Assembly create an open and transparent selection process for the appointment of Commission Members.

Powers of the Commission

A number of presenters requested that the Committee consider increasing the powers of the Human Rights Commission. One such suggestion was that the legislation should provide the Commission with authority in the regulations to publish guidelines or policy statements on its interpretation of the *Act*. The Committee is of the view that the Commission already has the authority to create guidelines and policies.

Another presenter suggested that the Commission's regulation making authority be extended to include the ability to set standards for the promotion of human rights in the various settings. Presenters also requested that the Commission be granted the power to monitor the implementation of the *Act* and to make suggestions for the amendment of the *Human Rights Act*.

Other key suggestions focused on the education role of the Human Rights Commission. Several presenters suggested that the Commission have the authority to engage in research for the promotion of human rights in the NWT. Presenters also requested that orientation programs to educate employers, non-governmental organizations and the public about the new legislation be added to the Human Rights Commissions mandate.

Egale Canada made a useful suggestion to extend the Commission's powers in clause 22 to enter into agreements with community organizations to provide outreach, research and delivery of programs. When the Committee inquired whether the different community organizations appearing before it would consider delivering education programs, we were told that the community groups would be interested in doing it if provided with adequate funding.

It was also suggested that Bill 1 be amended to put all the decision-making powers into the hands of the Commission, rather than that of the Director. The NWT Federation of Labour also suggested that the Commission, rather than the Legislative Assembly, appoint the Director.

It is evident that the legislation envisages the Human Rights Commission as being responsible for promoting the objects of the *Human Rights Act* through education, hiring of staff, creating policy guidelines, and acting as an advisor on human rights issues. The decision to provide the Director with the authority to make decisions on complaints is designed to promote efficiency in the complaints process. Because the Director is in a position to make decisions on complaints initiated by the Commission, the Committee believes that it is necessary that the Legislative Assembly appoint the Director.

The Committee agrees that allowing the Commission to engage in research on human rights furthers the goals of the *Human Rights Act*. The Committee also believes that expanding the powers of the Commission in clause 22(2) to contract with community groups to deliver education programs designed to eliminate discrimination or educate on human rights issues is warranted. Allowing community organizations to participate in the delivery of education programs potentially increases the number of people educated about human rights. It also allows the Commission to design flexible education strategies to meet regional needs.

The Committee subsequently passed a motion to amend clause 20 to allow for the Human Rights Commission to engage in research that it considers necessary to promote human rights and eliminate discriminatory practices.

An additional motion was passed to amend clause 22(2) to allow the Human Rights Commission to contract with community organizations to provide for education programs designed to promote human rights.

Complaint Process

The Committee considered whether changes could be made to improve the complaint process created in Bill 1.

Presenters made several recommendations on how the complaint process could be improved or made more accessible to residents of the NWT. The most significant recommendation was to create an arms-length independent advocate to assist parties through the complaint process. The arms-length advocate is dealt with later in this report.

The Fair Practices Officer told us that the proposed process is too complex. She cited the numerous difficulties experienced by southern human rights bodies, and recommended that the government consider using a format similar to the one currently used in the *Fair Practices Act*. Alternatively, she suggested that the Committee consider using a "direct access" type model. The "direct access model" is one that provides the parties with access to the ultimate decision-makers in their case because all complaints are made to the adjudication body.

Another suggested change was that the legislation should include timelines within which the Director must make his or her initial review and inquiry into a complaint under clause 30(2) of the *Act*. Presenters also requested an amendment to clause 30 to reflect a commitment to protect the confidentiality of the complainant.

Some presenters thought that the Director should have greater authority in the settlement provisions of the *Act*. Clause 33 encourages parties to settle the complaint before adjudication. It was suggested that the Director should have the power to "veto" settlements that do not promote the objectives of the *Act* or that appear unfair. Another suggestion was that Bill 1 should incorporate clause 7.4 of the *Fair Practices Act*, which allows the Fair Practices Officer to continue a complaint even if the parties have settled where the Fair Practices Officer considers it in the best interest of the complainant. We were told that this right to continue a complaint would likely be used when a settlement appears to be unfair or runs contrary to goals of human rights legislation.

The Committee is aware that the current structure and process required under the *Fair Practices Act* runs contrary to some basic principles of natural justice. The *Fair Practices Act* creates an office of the "Fair Practices Officer", with the Fair Practices Officer bearing multiple and often conflicting responsibilities. The Fair Practices Officer is responsible for accepting complaints; facilitating settlements; investigating complaints; and where necessary, adjudicating complaints. This overlapping responsibility raises significant concerns regarding administrative fairness and independence in the decision-making process. For instance, having the same person investigate a claim and deciding that a hearing is necessary, then also determining whether there has been a violation of the *Act* can appear to be unfair.

The Committee is aware that other jurisdictions have considered modifying their human rights regimes to reduce costs and increase accessibility. With the exception of British Columbia, the Committee is not aware of any jurisdiction in Canada that is shifting towards a "direct access" model. Presently, most human rights regimes in Canada have three primary functions: education, investigation and adjudication. The adjudication function is separate from the investigation and education roles of the Commission to promote compliance with the principles of natural justice.

In 2000, the Canadian Human Rights Act Review Panel suggested an amendment to the *Canadian Human Rights Act* to remove the investigation role from the Canadian Human Rights Commission and shift it to the Tribunal to create a "direct access" model. The Panel was of the view that the Tribunal should determine whether a complaint warranted a hearing or not. However, when making this recommendation the Review Panel explicitly recognized that a direct access model would require significant additional resources and result in greater complexity.

The model that is proposed in Bill 1 does provide complainants with some "direct access" to the adjudication panel. Clause 45 allows complainants to appeal directly to the adjudication panel for a review of the Director's decision to dismiss a complaint.

The Committee is also sensitive to the concerns about unfair settlements, however in the interest of promoting mediation and encouraging parties to agree to the settlement process, the Committee declines to recommend changes to clause 33.

The Committee believes that our residents would benefit from a timely complaint process. Of particular concern to the Committee is the delay in the processing of complaints experienced in other jurisdictions in Canada and at the federal level. The Committee supports the creation of timelines on the Director's initial review and inquiry into a complaint, but believes that such timelines are better set by the Commission itself. Once created, the Human Rights Commission will be in the best position to determine what is a reasonable length of time to process complaints.

Finally, the Committee also believes that the Human Rights Commission and the Director will be in the best position to create policies and guidelines to protect the privacy interests of all parties to a complaint. Currently, only orders made by an adjudicator will be made public through the public registry created in clause 27(1)(b).

The Committee passed motions to amend clause 30(2) requiring the Director to inquire and review a complaint as soon as possible or within the time prescribed, and to grant the Commission the power to make regulations to create the timelines referred to in clause 30(2).

Accessibility

Presenters were greatly concerned about the accessibility of the complaint process. Adequate funding of the Human Rights Commission is seen as one of the primary ways to address issues of accessibility. Many presenters encouraged the Committee to make recommendations that the Human Rights Commission receive adequate funding to carry out its education and investigation functions.

In addition to requests for adequate funding, presenters consistently requested that the government create mechanisms to promote and enhance access to the protections provided in the *Human Rights Act*. The presenters identified three primary ways to increase access to the complaint process. The first method requires the legislature to create an arms-length advocate position to assist parties with their complaints. The second suggested method is to provide legal funding, including the funding of appeals, to parties of a complaint. The third method is to empower the Human Rights Commission to pay for travel costs of complainants.

Arms length Independent Advocate:

Almost all presenters that came before the Committee asked that the legislature to create an arms-length independent advocate position to assist parties through the complaint process. The Committee heard that the advocate would assist the parties to fill out the required forms, to gather the necessary evidence and support, and to prepare his or her case. Independence from the Human Rights Commission is considered a key aspect of this position. Many suggested creating a position similar to that of the "Workers' Advisor" of the Workers' Compensation Board.

Legal Counsel:

A related proposal suggested to increase accessibility to the protections in the *Act* is the provision of legal services, particularly to complainants. A number of presenters requested that the Human Rights Commission provide both an independent advocate and legal counsel for complainants. Presenters viewed independent legal advice as a key component in addressing issues of access. They argued that, without assistance, the complexity of the complaint process would discourage people from coming forward to make a complaint.

Several presenters thought that legal counsel should be provided at every stage of the process. Others thought that it should be provided at the adjudication and appeal stages of the process. For instance, the Committee heard several recommendations that the Commission should pay for appeals made to the Supreme Court of the Northwest Territories.

Travel Expenses:

Many presenters recommended that the Human Rights Commissions absorb the travel costs of complainants. The Committee heard that paying travel costs of complainants is necessary to ensure that the human rights complaints process is accessible to residents of smaller communities. Supporters of this recommendation felt that people would be less likely to pursue complaints because of a lack of resources. In their view, travel funding would greatly promote access to the adjudication process.

The Committee agrees that having an accessible human rights regime is fundamental to the promotion and protection of human rights in the NWT. To that end, we suggest that the Legislative Assembly adopt measures that best promote access to the remedies provided under the *Human Rights Act*.

It is difficult to determine what kinds of resources the Commission will require to carry out its functions. To avoid overburdening the Commission at this time, the Committee is seeking to make recommendations that promote the objects of the *Act*, while recognizing the enormity of the task before the Commission.

The Committee encourages the Legislative Assembly to provide adequate resources to the Human Rights Commission to ensure that it can carry out its functions. The Human Rights Commission will play a significant role in educating the public about human rights issues, and having sufficient resources is essential to enable the Commission to fulfil this role. We wish to avoid the problems caused by inadequate funding experienced by human rights bodies elsewhere in Canada.

In order to promote accessibility, the Committee is recommending that clause 22(2) be amended to allow the Commission to appoint employees to advocate for or assist a party to pursue their remedies under the *Act*. This enables the Human Rights Commission to respond to the needs of a party as required.

The Committee questioned several presenters about the possibility of providing legal aid to parties to a complaint as opposed to providing legal counsel in every case. There was general support for this suggestion. For that reason, we encourage the Government of the Northwest Territories to consider extending legal aid coverage to include human rights complaints.

The Committee does not believe that an amendment to cover the costs of travel is necessary at this time.

Recommendations:

The Standing Committee on Social Programs recommends that clause 22(2) be amended to provide the Human Rights Commission with the authority to appoint an advocate to assist a party to a complaint on an as-needed basis.

The Standing Committee on Social Programs recommends that the government consider the possibility of amending the *Legal Services Act* to allow for the funding of human rights complaints for parties who qualify under the legal aid plan.

Adjudication

The Committee considered whether any changes are necessary to the appointment process and the powers of the adjudication panel.

The Committee was asked to consider expanding the remedial powers of the adjudicator under clause 62(3) to allow for an adjudicator to order reinstatement, payment of disbursements and costs. Adding exemplary damages to address situations where the respondent has acted "contemptuously of the complainant's rights" was also suggested.

Other presenters were concerned that only lawyers could be adjudicators. They requested that the requirement that an adjudicator be a member of a law society be removed from clause 48(3)(a).

Several presenters expressed concern over the possibility that complainants may be ordered to pay costs under clause 63. They are concerned that some complainants will be unduly penalized because they lack the resources to advance their claims. They suggested that cost awards only be made available against the respondent.

The Committee agrees that the *Act* would benefit from providing the adjudication panel with additional powers to order things like reinstatement and exemplary damages. Exemplary damages are available in Canada, Saskatchewan, New Brunswick, Yukon and Manitoba. Ontario allows for damages for "mental anguish". The Committee believes that it would be useful to place a cap of $10,000 on the amount of exemplary damages available under the *Act*.

The Committee heard about the complexity of the adjudication process. In light of this, Committee also believes that it would be useful to provide the Chair of the adjudication panel with sufficient flexibility to appoint more than one adjudicator to sit on more complex matters. The Committee believes that almost all complaints should be heard by one adjudicator, however, we do foresee some situations where it would be necessary to appoint more than one panel member to sit on a case.

With respect to the qualifications of the adjudication panel members, it is evident that the legislation provides the Legislation Assembly with the option of choosing non-lawyers to sit as adjudicators. Clauses 48(3)(a) and (b) operate to provide the Legislative Assembly with a choice between lawyers with 5 years experience or non-lawyers with 5 years experience on an administrative tribunal or court.

The Committee does not agree that cost awards should be awarded against the respondent only. The Committee is satisfied that the current provision sets a sufficiently high standard (frivolous and vexatious) that will protect complainants who create delay because of lack of resources from being penalized. The Committee also believes that costs should be available in other circumstances, such as in cases of particularly egregious breaches of the *Act* or where a respondent has repeatedly engaged in discriminatory behaviour. Enabling adjudicators in the NWT to award costs is also consistent with legislation in other jurisdictions in Canada. Currently, Ontario, Manitoba, Alberta, Quebec, Prince Edward Island and Newfoundland all grant the tribunal or adjudication panel with broad discretion to award costs in a complaint.

The Committee passed a motion to amend clause 62(3) to allow the adjudicator to order reinstatement of an employee.

Recommendations:

The Standing Committee on Social Programs recommends that clause 51 be amended to allow the Chair to appoint more than one adjudicator, where necessary.

The Standing Committee on Social Programs recommends that clause 62(3) be amended to allow the adjudicator to award exemplary damages to a maximum of $10,000.

The Standing Committee on Social Programs recommends that clause 63(3) be amended to allow the adjudicator to award costs in extraordinary circumstances.

Pay Equity

The Committee considered whether pay equity should be included in the *Human Rights Act* or whether it should be the subject of a separate piece of legislation. Currently, the *Fair Practices Act* provides for equal pay for the same work between men and women in the private sector. Bill 1 proposes to extend this protection to include all grounds of prohibited discrimination, so that it is not limited to differences in pay based on gender.

As noted previously, the NWT has not been granted an exemption from application of the federal human rights legislation. Consequently, the pay equity provisions under section 11 of the *Canadian Human Rights Act* govern employees of the Government of the Northwest Territories.

Several presenters were unsatisfied with the "equal pay" provisions in Bill 1. They argued that the *Human Rights Act* should provide for pay equity. Pay equity refers to the application of the principle of "equal pay for work of equal value". Alternatively, Bill 1 prohibits differences in pay based on any of the prohibited grounds of discrimination for work that is the same or substantially the same.

The *Fair Practices Act* and the proposed *Human Rights Act* are premised on the principle of "equal pay for same or substantially similar work". The application of this principle requires that where a male employee and a female employee perform the same or substantially similar work, they are to be paid the same wages. Whether work is the same or substantially similar is determined by considering the skills, responsibilities, effort required for each job and the working conditions under which the work is performed.

Pay equity refers to the application of the principle of "equal pay for work of equal value". This principle is reflected in a number of other statutes, including the *Canadian Human Rights Act*. Equal pay for work of equal value acknowledges that women and men are often segregated into different occupations in the workforce, and are paid different wages based on that segregation. This means that there are jobs in the labour market that are predominantly performed by women, and others that are predominantly performed by men. Studies show that jobs predominantly performed by women are paid less than jobs predominantly held by men, resulting in a "wage gap".

It is believed that this gap in men and women's wages is based, at least in part, on the undervaluing of "women's work". Although there are a number of factors contributing to the wage gap between men and women, pay equity assumes that the appropriate way to address these inequalities is to address the inequality in the *valuation* of work performed by women. Thus, the focus of this approach is the *value* of the work performed.

Determining whether female employees are being paid the same as their male counterparts for work of equal value is a complex process. It requires employers to evaluate female-dominated job classes and male-dominated job classes and to assign a value to each job. The value of a job is determined through examination of the skill, effort, level of responsibility and conditions of the work. Once the jobs are assigned a point value, the female-dominated jobs are compared to male-dominated jobs of the same or similar point value. Wage discrepancies between the two groups are addressed through wage adjustments; however, only the female dominated job class is entitled to a wage adjustment.

The Status of Women Council argued that systemic gender discrimination in pay would not end unless the government adopts proactive pay equity in the NWT. They asked the Committee to extend the pay equity provisions beyond gender to include all the prohibited grounds of discrimination. We were told that extending the protections beyond gender would facilitate the recognition of other valuable skills, such as traditional knowledge.

The Committee was asked to amend the legislation to implement proactive pay equity in both the private and public sectors. Presenters suggested that the Committee adopt the approach taken in Ontario. This legislation requires employers with 10 or more employees to implement pay equity in their workplaces. Alternatively, one presenter, a small business owner, cautioned the Committee from implementing pay equity in the private sector because of the significant costs associated with evaluating and comparing jobs. In his view, pay equity places too great of a burden on small employers.

The Government of the Northwest Territories has informed the Committee that it is working on amendments to the *Public Service Act* that would implement pay equity in the public sector. The Government is of the opinion that because pay equity is a complex and a highly technical process, it is necessary to enact it in separate legislation.

Pay equity schemes can be proactive or complaints-based. Of the jurisdictions in Canada that have implemented pay equity, most do so by requiring the affected parties to negotiate pay equity in the workplace. Only Ontario and Quebec have implemented proactive pay equity schemes requiring employers to meet statutory standards of pay equity. The *Canadian Human Rights Act*, the *Fair Practices Act* and Bill 1, *Human Rights Act* all rely on complaints-based systems. This means that while discrepancies in pay on the basis of gender are prohibited, employers will not be held accountable until a complaint is laid.

Most jurisdictions that provide for pay equity do so in separate legislation; therefore, many human rights statutes do not include these initiatives. Ontario, Quebec, Manitoba, New Brunswick, Prince Edward Island, and Nova Scotia have all enacted separate pay equity legislation. The federal government and the Yukon are the only jurisdictions to have pay equity in their human rights legislation.

Of the six jurisdictions that have enacted separate pay equity legislation, all but two (Ontario and Quebec) apply to the public sector only. As a result, PEI, Nova Scotia, New Brunswick, Saskatchewan and Manitoba have all enacted separate "*equal pay for same/similar work*" provisions in their human rights legislation or employment standards legislation. These provisions are similar to what is provided in Bill 1.

Saskatchewan has implemented the *Equal Pay for Work of Equal Value and Pay Equity Policy Framework* within the public sector. Newfoundland has implemented pay equity in the public sector through collective bargaining. Of the jurisdictions without any form of pay equity, all include "equal pay for same/similar work" in their human rights or employment standards legislation. Again, this is similar to the standard provided in our legislation.

The Committee is concerned about applying a "made-in-Ontario" model of pay equity to the NWT. Accordingly, the Committee inquired with presenters whether they thought it was appropriate to apply the Ontario model to the NWT given the significant differences between the two jurisdictions. The Committee also pointed to the problems that both Ontario and Quebec were facing with non-compliance, particularly with smaller establishments.

The responses received by the Committee did not address the concerns raised. Many presenters were unable to offer any suggested alternatives to the Committee on these issues. Furthermore, of the presenters that answered this question, none were able to supply the Committee with information that would support the inclusion of pay equity in the *Human Rights Act* as opposed to including it in separate legislation.

The Committee is satisfied with the contention of the Government of the Northwest Territories that pay equity should not be included in the *Human Rights Act* at this time. We have assurances from the Government of the Northwest Territories that pay equity legislation for the public sector is forthcoming. We trust that this will be sufficient to warrant an exemption under section 66 of the *Canadian Human Rights Act*.

Acknowledgements

The Standing Committee on Social Programs gratefully acknowledges the assistance of the Minister of Justice and the Department of Justice officials in the review process.

The Standing Committee on Social Programs would like to thank all the individuals and organizations who made their views known to the Committee at public hearings or through written submissions. The quality and detail of the presentations and written submissions demonstrate the effort and time dedicated to their preparation. The public input received by the Committee greatly enriched the review process, and has resulted in changes to the legislation.

The Standing Committee on Social Programs gratefully acknowledges the exemplary service of its Clerk, Researcher and Law Clerk throughout the course of our review.

APPENDIX "A"

TRANSCRIPTS OF PUBLIC HEARINGS
BILL 1, *HUMAN RIGHTS ACT*

Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Review of Bill 1, Human Rights Act

June 19, 2002

Public Review

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Mr. Leon Lafferty, MLA for North Slave

Other Members:

Mr. Paul Delorey, MLA for Hay River North

Mr. Michael McLeod, MLA for Deh Cho

Ms. Sandy Lee, MLA for Range Lake

Witnesses

The Honourable Roger Allen, Minister responsible for Justice

Ms. Janis Cooper, Legislative Counsel, Justice

Diane Buckland, Legislative Counsel, Justice

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Katherine Peterson, Law Clerk

Ms. Shirley Johnson, Director of Research

STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Review of Bill 1, Human Rights Act

June 19, 2002

MR. CHAIRMAN (Mr. Bell): Okay, I think we will get under with our initiation of the public review of Bill 1. This is the Standing Committee on Social Programs. Mr. Braden, will you lead us off with a prayer?

MR. BRADEN: Creator, as we begin work an especially significant piece of legislation on behalf of our people give us guidance to do good work. Help us to listen and learn as we go about this part of our duty. Amen.

--Amen

MR. CHAIRMAN (Mr. Bell): For the record, we have committee members: Mrs. Groenewegen, Mr. Dent, Mr. Braden. We also have Mr. Delorey here today with us. Mr. Lafferty will be joining us shortly. Staff: committee clerk, Dave Inch, and we have Shirley Johnson and Katherine Peterson.

Mr. Minister, if you would like to open with your comments and introduce your staff for us? Thank you.

HON. ROGER ALLEN: Thank you, Mr. Chairman. I have with me today, two exceptionally well looking ladies, if I may, Janis Cooper to my right and Diane Buckland, both legislative counsel, Legal Division, Justice as well as myself, Mr. Chairman, I will state for the record my name is Roger Allen. I am the Minister of Justice. So if I may begin with some opening remarks?

MR. CHAIRMAN (Mr. Bell): Please.

HON. ROGER ALLEN: Mr. Chairman, in March 2000, our Legislative Assembly passed a motion calling on the Department of Justice to develop a Human Rights Act for the Northwest Territories. I am pleased to be here today as your committee begins its public review of this bill.

Many people face discrimination in their day to day lives, human rights legislation is society's way of saying that all people should be treated with dignity, and respect. Discrimination is not acceptable. People should not be treated badly because characteristics like their gender, race or religion. Human rights legislation can also be a way to acknowledge that people are not always aware of discrimination and may need more information about it. People should be assisted when they confront discrimination and there should be a process to help them work through these problems.

The call for updated human rights legislation shows that we want to move a step closer to having a society where all people are treated with dignity and respect.

Where regardless of personal characteristics like race, religion, gender, age, disabilities or sexual orientation, every one knows that they have protection against discrimination. What do we have today that protects human rights? On an international level there are a number of human rights treaties. One of the fundamental is the Universal Declaration of Human Rights which was adopted by the general assembly of the United Nations in 1948, following the atrocities carried out during the second world war.

In Canada, the Canadian Charter of Rights and Freedoms provides everyone with equal protection and equal benefit of the law, without discrimination. In other words, it protects people against discriminatory laws that may be made by government. The Canadian Human Rights Act protects people from discrimination in a different way. It applies to some of the activities of the federal government. For example, as employer of the Federal Public Service, it regulates organizations who are under federal authority like banks. It applies to some of the activities of aboriginal governments. The Canadian Human Rights Act also applies to the Government of the Northwest Territories, as an employer of the territorial public service.

In addition, since the mid 1960s the Northwest Territories has had a Fair Practice Legislation which is a form of Territorial Human Rights law. The Fair Practice Act provides some human rights protections In relation to activities that can be regulated by territorial law.

Over the years, the Fair Practice Act has been updated but it still falls below the standard of Human Rights Legislation most other provinces and territories, and it fails to reflect that many of the things that people of the Northwest Territories say are important today.

I will go through some of the main differences between the Fair Practice Act and Bill 1, the Human Rights Act for the Northwest Territories:

There are a number of grounds of discrimination set out in the Fair Practice Act and in Bill 1. These reflect personal characteristics and circumstances. In the past, and still now, people have been subjected to negative stereo types on the basis of these characteristics and as a result they have been treated unfairly. Human rights law forbids discrimination on the basis of these characteristics in situations regulated by the Act.

The grounds of discrimination in the Fair Practice Act are: race, creed, which included spiritual belief and religion, colour, sex, marital status, nationality, ancestry, place of origin, disability, age, family status and a criminal conviction if a pardon has been granted.

Bill 1 includes these grounds and also adds to them: sexual orientation is included in Bill 1. Protection on the basis of sexual orientation is included in Bill 1. Protection on the basis of sexual orientation is required because of case law from the Supreme Court of Canada. There was also a strong public support for including it during the department's consultations. The ground called Social Addition was added to provide protections to people who are on social assistance, who live in poverty, or who are otherwise part of a disadvantaged social group. These people are often subjected to negative stereo types which makes it harder for them to improve their lives and their lives of their families. This ground was included as a result of early consultations and continued to be supported later in the consultation process.

You will see that religion and ethnic origin are both added to the list. Neither is really new. The concept of religion Is covered in the current group called "creed". Ethnic origin would be covered within the scope of the grounds of race, ancestry, and place of origin. However, as a result of consultations, these two grounds were included to ensure clarity. The Fair Practice Act provides people with protection from discrimination in normal situations Employers are not permitted to discriminate when hiring people and they can not discriminate for people who work for them. For example, an employer can not refuse to hire a person because of his or her gender. Trade unions can not discriminate against people who apply for membership. They can not discriminate in their policies to suspend or expel members. This is such as restaurants, hotels and stores that provide service to the public, can not refuse to provide any one with the services on a basis of one of the grounds of discrimination.

Landlords are prohibited from discriminating against people who want to rent apartment units. The Fair Practice Act also forbids discrimination in the publication or display of any notice or signs. Finally where an employer hires male and female employees who perform similar or substantially similar work, the Fair Practice Act prohibits employer from paying a female employee less than the male employee for that similar work. These situations can and need to be protected in the proposed Human Rights Act but the language and the number of provisions is updated and more details are added. In addition, some protections have been expanded. T

The protection from discrimination employment contained in the Fair Practice Act does not apply to people providing domestic services like nannies. During consultation, most people criticised this exclusion. The Bill reflects the Departments' consultation so that people providing domestic service will have the protection of the employment provisions in the new Act.

Another issue of concern raised during community consultations was that people in the communities often see discrimination in employment situation on the basis of a persons political ties or family ties. A provision of the bill includes these grounds of discrimination for employment situations. The section of the Fair Practice Act that requires equal pay for women who performs similar or substantially similar work as men, has expanded to apply to all of the grounds of discrimination this is in the Act.

In addition, more details were added to clarify things that do not constitute discrimination in these circumstances. This is to assist employees and employers to understand their legal rights and obligations. When it comes to organizations that can have an affect on people's employment, the Fair Practice Act only covers trade unions. Bill 1 expands the coverage of that employers organizations, and occupational and associations were also forbidden to discriminate against members or potential members.

The tenancy protection was extended in Bill 1, so that it would cover the rental of trailers and houses in addition to apartments. It has also been expanded to cover commercial premises. This is similar to the protections in most other Canadian jurisdictions. Its provision was included to prohibit harassment on the basis of the grounds of discrimination set out in the Act. This is in relation to the three main activities covered by the Act, providing goods and services, commercial and residential tendencies and employment. This is similar to federal human rights legislation.

When a scheme is being developed to protect human rights it is important to ensure that programs designed to assist specific groups are not undermined. Affirmative Action programs need to be protected. The Fair Practice Act allows a commissioner and executive council approved programs to promote the welfare of any class of individuals. If a program is approved then it is not a contravention of the Act.

Bill 1 also contains a section Protective Affirmative Action, laws programs and activities and an Affirmative Action Scheme would not require prior approval. The wording is similar to wording that protects Affirmative Action programs in the Canadian Charter of Rights and Freedoms.

Bill 1 also ensure that programs approved under the Fair Practice Act continue to be protected. The big difference between the Fair Practice Act and Bill 1 is the administrative structure that supports the rights that are protected under the Fair Practice Act. Fair Practice officers are appointed and contracted by the government to deal with complaints and to hold hearings if necessary. There is no separation of the Act between the rules of investigating complaints, assisting in the settlement of the settlement of complaints and holding hearings.

As the result, there Is very little room for the Fair Practice Office to provide advise and assistance to the people who need it because fair practice officers. have to make formal decisions on complaints that can not be settled, they are restricting the amount of help that they can provide to the people with complaints. If their office did provide complainants with advice and assistance then fair practice officers could be accused of favouring complainants when hearing are held. The mandate of the fair practice officer is limited to resolving complaints under the Fair Practice Act.

For a number of years, people in groups have been expressing concern that there is not enough when it comes to educating the public and providing human rights in the Northwest Territories. People are concerned that in order to take human rights seriously there has to be more public education and more involvement with the public. Under Bill 1, a small commission is established to oversee the protection and promotion of human rights. The commission is mandated to promote human rights, to develop public information and education programs, and to provide advice to the Legislative Assembly. Under the proposed legislation, a director reporting to the commission is responsible for receiving complaints and to assist in settling them. In an emphasis on settling complaints without hearings is part of the Fair Practice Act that works well now. Fair Practice officers are required to assist parties to settle complaints by agreement. The majority of complaints are resolved without going to a hearing.

In Bill 1, the complaints process has been updated but there is still an emphasis on the settlement of complaints. Under the Bill, the director has a primary responsibility to process complaints. In addition, he or she is provided with the power to dismiss complaints in the few limited situations. If a matter can not be settled then it will be heard by an independent adjudicator.

A separate adjudication panel will be set up so that a single adjudicator can hear a complaint if it can not be resolved with a directors' help. Under Bill 1, the Commission's mandate answers the publics concern that more emphasis should be placed on human rights education and promotion in the Northwest Territories.

The division of responsibilities between the small commission, the director and the adjudicator means that the Commission will be able to work out a delivery system to address the needs of northerners.

The Department of Justice has consulted broadly on the development of the human rights legislation. The people who we heard from provided a lot of input and support. However, it Is a big legislative scheme, and there may be room for still more improvement. Justice, staff and committee staff have had some preliminary discussions on a few of these issues. As a result of these early discussions, as a result of further consideration of some other small issues, in the coming months, I may propose a few motions for consideration during this review.

In conclusion, Mr. Chairman, I would like to thank the committee for inviting me to appear before you today. I think that this is important piece of legislation that can have a very positive effect on the Northwest Territories. I look forward to following the progress of your review. Thank you.

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Minister for those comments. Your comprehensive outline of the differences between the present Fair Practice Act and the proposed Bill 1. For the record, I will indicate that Mr. Lafferty and Mr.

McLeod have joined the committee. I would like to now ask Members if they have any comments or questions for the Minister? Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I certainly welcome seeing this legislation. It is one I have looked forward to seeing since I first heard an inkling that it might be coming forward. I think it is time that we moved on. I think the establishment of a Human Rights Commission in the Northwest Territories is long overdue and I welcome the proposal. I am looking forward to getting into the public review process and hearing what people have to say about it.

Maybe just to help us understand just how prepared the public is going to be for our consultation for them, could we get a bit of an outline as to what has happened to date, in terms of how the public has been presented with they are going to be looking at? What has been the process to get the information out there, so far?

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Minister.

HON. ROGER ALLEN: Yes, Thank you, Mr. Chairman. There is a number of information developed to date. If I may just use some of the background to that. In Fort Providence on February 9th, the Department gave a presentation to all MLA's on development of the proposed Human Rights Act to replace the Fair Practice Act. On March 31st, 2000, a motion calling for the government to introduce Human Rights legislation no later than November 30th, 2000 was carried in the Legislative Assembly. At the end of September, 2000, Department of Justice distributed a consultation paper summarizing the issues associated with the development of human rights legislation.

This paper went out to a number of organizations. Again in November 2000, the Department tabled a proposed Human Rights Act in the Legislative Assembly. A user friendly brochure on the proposed act was distributed through northern newspapers on March 5th, 2001. This had wide distribution. Public consultation on the proposed act continued during the spring and summer of 2001. Again the Department contracted an expert in equal pay to hold specific consultation on the issue during the fall of 2001. Finally a draft bill and issues paper on equal pay were tabled for information purposes in the Legislative Assembly in 2001. That currently is the status of...

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. For the record, Ms. Lee has joined committee. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. That certainly it sounds like there has been a fair bit of work done to make sure the public is aware that this bill is coming along. I know that Members of committee are anxious to be satisfied that we are not going to be in a situation where at the public hearings we hold, the public comes to us and says, well we did not hear about this. We did not know it was going on. We did not have a chance to comment. Is the Minister satisfied that there has been a really extensive public process and that the public should be well prepared for telling us what they think about this bill now?

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Minister.

HON. ROGER ALLEN: Thank you, Mr. Chairman. Since I took over the portfolio in late October, I am confident that the requirements to make the public aware that this Human Rights Act or Bill 1 has been developed and also entered into the process. I am confident with the levels of information I have that the public has been made aware that this Bill is now taking some fairly active participation. So I am fairly comfortable. Thank you.

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. No, no more questions, just a comment. In my opinion this is probably the most important Bill this legislature, the 14th Assembly will consider in its life. So I wanted the Minister to assure us that a lack of consultation would not be one reason that we would have not to proceed with it so I really do hope that we can get through the public consultation process and report back to the Assembly because I think it is overdue. This type of legislation and I am looking forward to seeing it in the House in the fall. Thank you.

MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Okay, I have Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. My colleague, Mr. Dent, scoped me on the question and I am satisfied with the answer about the degree of awareness that is out there and I guess we will see in September. I would just like to echo the comments of the significance of this legislation. I have taken the opportunity to talk to some of the constituents and other people in the community who have expressed interest in this initiative. They have stressed just how important this is. It is not often that legislatures undertake a review of this magnitude, this scope in something as critical and fundamental to our society as a Human Rights Bill.

So, I too am looking forward to going out into the communities. I do hope that the people who have been contacted and have the information and other who may just becoming aware of this, do take the time to look this over. This is a big piece of work, a very important one for all northerners and I think will be the threshold and touchstone for our Assembly, for the people of the Northwest Territories for some years to come. So I am treating this very seriously and with quite a bit of enthusiasm. Thank you.

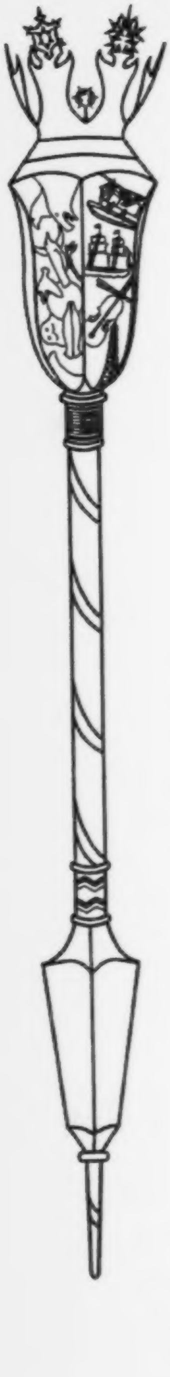
MR. CHAIRMAN (Mr. Bell): Thank you, Mr. Braden, and I think we all are. Any other comments from Members? If not, Mr. Minister, any final questions, comments for committee?

HON. ROGER ALLEN: Mr. Chairman, no, I would gather we are ready to proceed with the next steps.

MR. CHAIRMAN (Mr. Bell): Very good. I would like to thank you, Mr. Minister and also thank Members of the committee who joined us. On behalf of the committee, I would like to take this opportunity to encourage all residents of the Northwest Territories to make their views known to us on this crucial piece of legislation. This can be done in a number of ways. People can provide their thoughts to us in writing, by fax, mail, email or in person. By registering to appear as a witness at our public hearings, it is our intention to convene these public hearings during roughly the first two weeks of September. Communities, organizations and individuals are all encouraged to make their views known either by written submission or by registering as a witness no later than August 15th, 2002.

Once our hearing venues have been determined, every effort will be made to accommodate those registered witnesses who do not live in the hearing location. So once again, please watch for our newspaper advertisements, and send us your views on the proposed Human Rights Act. Committee clerk can be contacted at 867 669 –2299, toll free at 1-800-661-0784. As far as written submissions are concerned, they can be sent to the attention of the Standing Committee on Social Programs at the Legislative Assembly or emailed to clerks@gov.nt.ca. Just again, a reminder that all written submissions and requests to appear as a witness have to be received by August 15th, 2002 so we can do some accurate scheduling. So thanks again everyone for being here today. On behalf of the Standing Committee on Social Programs, we are looking forward to a constructive and rewarding review process. With that, Mr. Clerk if there is nothing further, I think we will adjourn the meeting. Thank you.

-- ADJOURNMENT



Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, Human Rights Act

September 5th and 6th, 2002

Inuvik, Northwest Territories

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Deputy Chair:

Mr. Leon Lafferty, MLA for North Slave

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Witnesses:

Ms. Gerry Sharpe-Staples, Inuvik Resident

Mr. Jim Guthrie, Inuvik Resident

Mr. Richard Nerysoo

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Kelly-Ann Fenney, Committee Researcher

Ms. Katherine Peterson, Law Clerk

STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Hearing on Bill 1, Human Rights Act

Inuvik, Northwest Territories

September 5th and 6th, 2002

September 5, 2002

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CHAIRMAN (Mr. Bell): For the record we have committee members Mr. Lafferty, Mrs. Groenewegen, Mr. Dent, Mr. Braden and I am Brendan Bell. Committee staff Mr. Inch, Ms. Peterson and Ms. Fenney. If there is anyone who would like to make a presentation before this committee, if you would state your name for the record. Seeing no one, I think we will reconvene at 7:00 p.m. There is a place to sign up just by the door for the evening session.

-- Break

CHAIRMAN (Mr. Bell): The Standing Committee on Social Programs will reconvene. It is a public hearing in Inuvik on Bill 1, Human Rights Act. Again for the record we have committee members Mr. Lafferty, Mr. Dent, Mr. Braden. I am Brendan Bell. We will be joined as well by Mrs. Groenewegen shortly. We are here to hear from members of the public and take submissions on Bill 1. If there is anyone who is interested in making a submission if you would indicate and come forward to the witness table and state their name and they will be able to begin.

If you are not aware, there is coffee and water and things at the back, so anybody who is interested please help themselves. Do we have anyone who would like to make a presentation. Please approach the table here so we have you on the record, and if you could state your name for our record that would be great.

MS. SHARPE-STAPLES: My name is Gerry Sharpe-Staples.

CHAIRMAN (Mr. Bell): Welcome.

MS. SHARPE-STAPLES: Thank you for coming to Inuvik. I have read the proposed Human Rights Act and before I make a few comments if you could give me clarification on the makeup of the commission and the relationship of the director.

CHAIRMAN (Mr. Bell): Yes I think we can do that. Maybe I will ask our Law Clerk, Katherine Peterson, to take us through that relationship briefly. Ms. Peterson, could you talk about the reporting relationships and how these folks are appointed?

MS. PETERSON: The persons who sit as commissioners of the Human Rights Commission -- there have to be between three and five commissioners who are appointed by the Commissioner of the Northwest Territories on the recommendation of the Legislative Assembly. The Assembly would put forward names for the appointments, and the Assembly putting forward those names to the Commissioner of the Northwest Territories would be respected by the Commissioner of the Northwest Territories, and the names put forward would receive those appointments. Similarly the Director of Human Rights is a person who is appointed by the Commissioner of the Northwest Territories on the recommendation of the Legislative Assembly. The Human Rights Commission reports to the Assembly once a year by filing an annual report indicating complaints that it has dealt with, the disposition of any complaints, the status of any complaints and any other activities that it has undertaken.

The commission itself as part of this sort of human rights organization is primarily mandated to deal with staff of the commission, but also to deal primarily with public education, awareness and promotion of human rights and the dignity of persons. The director is really kind of a hands-on person in the human rights organization, and the director sits as secretary to the Human Rights Commission and reports to the commission four times a year about the status of matters and activities that have been undertaken, including the status of any complaints.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Sharpe-Staples.

MS. SHARPE-STAPLES: That clarifies what I had misunderstood. I notice the definitions in the proposed bill and under the proposed bill the definition of "disability" is quite vague, considering that most complaints take up 30 percent of human rights complaints. You might want to redefine disabilities and extend that definition.

CHAIRMAN (Mr. Bell): Sorry, just for clarification, you said that 30 percent of human rights complaints involve disabilities issues?

MS. SHARPE-STAPLES: That is right, whether it is access to buildings or disabilities on the job, so you may want to extend that definition to suit that that takes up more complaints mainly because 30 percent is quite a bit. I believe that in Alberta that the highest ranking complaints are disability related.

CHAIRMAN (Mr. Bell): So you are saying that what constitutes a disability for the purpose of this Act has to be more clearly articulated?

MS. SHARPE-STAPLES: That is right.

CHAIRMAN (Mr. Bell): Thank you.

MS. SHARPE-STAPLES: Also once a decision has been reached by the Human Rights Commission there is an appeals process in place, but it does not consider people who do not have the funds to go the Supreme Court. You may want to look at that in case a complaint has been set forth with no grounds and is put forward, and the complainant wants to appeal the decision. You may want to look at putting something in place for that -- maybe having the commission paying for an attorney for that defendant.

I know that in the proposed Act is says that the members will be made up of three to five people, but the makeup of the NWT and the people in it are quite broad, not only in culture, race, economic grounds but also in location. You may want to look at representation based on population so that each region is represented. Not only regions, but also -- not each group per se so much as everybody who is affected is represented here. That will be really hard to do in how you are going to decide who that will be, but aboriginal governments need to be considered, elders need to be considered, the birth date/place needs to be considered and somebody who is hands-off needs to be considered. At the same time we do not want everyone from Yellowknife being chosen.

The last suggestion I have is that the appointments should probably be from public input, rather than being hand picked by the Legislative Assembly -- there might be political grounds there. If each region were to submit names it might be more representative of the regions, rather than being hand picked by people who feel -- if they were picked by the Legislative Assembly then it would be the government at that time rather than somebody who is quite deserving and would have the merit to do the job of this position.

CHAIRMAN (Mr. Bell): Have you given any thought to what kind of a mechanism could be used to bring forward these regional submissions?

MS. SHARPE-STAPLES: No, none at all, but I think it should be regional whether the names be put forth and chosen that way. I am sure that once self-government comes along it might be a little bit easier. That is another avenue that I do not think has been really considered. Once self-government is in place that will be a government that has equal say to diminish the poll -- and community governments. That might be one approach to use, or even hamlets. I am sure that they would have input of value that way. Other than that I do not have any other comments.

CHAIRMAN (Mr. Bell): Okay, would it be agreeable if I asked the members if they've any questions for you?

MS. SHARPE-STAPLES: Okay.

CHAIRMAN (Mr. Bell): I will do that. Mr. Dent.

MR. DENT: If I could just ask, you had suggested that the definition of "disability" is too narrow in the proposed Act. Do you have any suggestions for areas in which it needs to be broadened out?

CHAIRMAN (Mr. Bell): Ms. Sharpe-Staples.

MS. SHARPE-STAPLES: I had one person suggest that the definition that she used -- and I cannot remember the name -- I believe it is the United Nations. They have a fairly good definition of disabilities.

CHAIRMAN (Mr. Bell): Thank you. Do any other committee members have questions? For the record, Mrs. Groenewegen has joined us. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman, and thank you, Ms. Sharpe-Staples for coming out tonight. A few minutes ago you were talking about a number of sectors or parts of society that you wanted to see represented. You had mentioned elders and youth and this kind of thing. I am sorry but I missed in what connection and where did you want to see this representation covered? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Staples.

MS. SHARPE-STAPLES: The numbers that you have suggested in the bill...

CHAIRMAN (Mr. Bell): Commissioner I believe you are referring to?

MS. SHARPE-STAPLES: Yes - the numbers would be from three to five. It should be no less than five for the pure fact that you want diversity there to represent the North. If at all possible, it should even be increased in numbers, for the pure fact that it is nearly impossible to represent the population of the Northwest Territories with three people. If you have five then you have representation from everybody. When I say that we have 11 aboriginal groups in the Northwest Territories, and if you were to pick one person out of those 11 you are going to have a toss-up of people there so it is going to he near impossible. You may want to even broaden that number to, say, have a large number of representation on the commission specific to the region.

If there is a complaint from the Inuvik region, for example, then have one or two people travel up here to the person who is representing the Inuvik region and then you would have those three people present at all times, but the Inuvik person would not be needed in Yellowknife. It is hard to see, but you will need to have representation of the population on there. You do not want people on there who are all government employees. You do not want people on there who are all elders. You do not want people on there who are all Muslim. You want a wide representation of the population, and that would mean all varieties, all employment sectors as well as each region.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden.

MR. BRADEN: One of the things that we are always challenged with when issues come up -- are we hearing all of the voices that could potentially be heard? Are we getting all those views on the table so that we could come up with a balanced decision on something? I am just a first term MLA but I have found that an enormous amount of effort is spent in gathering the people and trying to get a process in place which will hopefully give you the balance. I have found that more often than not, even though you go through a lot of effort, at the end of the day it is very difficult to get that. I take it that what you are seeking is just to make sure that we do not have a group of lawyers sitting on the commission, which I think is essentially what the bill is proposing -- that they be people who are really well experienced in law. That is the only qualification that the bill is proposing. You are suggesting that we try and cover other bases, for instance elders, youth and some of the other ones that you mentioned...

MS. SHARPE-STAPLES: Aboriginal organizations.

MR. BRADEN: Thank you. It may be men, women -- labour for instance. Alright, I take the point and it is a good point. Thank you.

CHAIRMAN (Mr. Bell): I think the challenge here is to have a workable sized commission yet also be representative. The public education role of this board commission will be key and so certainly people that can relate to the broad cross section of Northerners -- it is very diverse as you mentioned --will be very important. I am wondering -- Ms. Peterson I am not sure if we have any information as to any rationale the government has proposed for the commission size of three to five. I do not know if that is something that has been discussed with us or presented to us? Ms. Peterson.

MS. PETERSON: - I do not recall what the earlier draft said and whether it changed between the first draft and this draft. I think that three to five has been present throughout, and I think it is trying to balance having a number that is not too large so that it is workable, and achieving some balance. But as you say it is hard to do that with a small number of people. Also as the Act is written, those positions remain, as far as I can tell, volunteer positions. Perhaps they are thinking that they are not going to be able to gather a large number. I am not sure.

CHAIRMAN (Mr. Bell): Okay, that is certainly a question we can pose to the Minister. Any other questions for Ms. Stapes? Any questions for the committee? Okay. I would like to thank you for coming out this evening, and we appreciate your input. Is there anybody else who has questions for us or who would like to make a presentation and would like to approach the witness table?

MR. GUTHRIE: I would like to ask a question.

CHAIRMAN (Mr. Bell): Certainly. Just before you start, if you could state your name for us.

MR. GUTHRIE: My name is Jim Guthrie, and I live in Inuvik. Welcome to Inuvik. I just wanted to ask a couple of questions for clarification. Do all the provinces in Canada and the federal government, does their act adopt the principles of the universal declaration of human rights as stated by the United Nations? Is this what I have been seeing as I travel across the land?

CHAIRMAN (Mr. Bell): I am going to venture a guess that no they do not because I think it is relatively new, but I am going to ask Ms. Peterson to tell me I am wrong. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman, to varying degrees but what is actually contained in human rights legislation varies quite a bit from province to province. This legislation is probably closest to what you would find federally and there are quite a few similarities to the Province of Quebec. But there are different sort of structural aspects and different grounds of discrimination in the legislation of different provinces. I do not know if that helps or not.

CHAIRMAN (Mr. Bell): Thank you. Mr. Guthrie.

MR. GUTHRIE: Thank you. In the summary here I was wondering if you could clarify under "employment", the last paragraph in the summary says: "Includes the provision that allows non-profit organizations, societies and corporations to use preferential treatment in hiring practices if that preference is directly related to the special objectives outlined in their mandate."

Working here in the ISR (Inuvialuit Settlement Region) and certainly working on Inuvialuit lands in oil and gas exploration, the Inuvialuit have preference in employment and business opportunities. I guess my question is though -- that is not my mandate. The corporation I run does not have that mandate. Could this fly in the face of that? Do you understand what I mean? I am working on Inuvialuit land in the ISR in my company or other companies, the Inuvialuit have preferential employment opportunities and business opportunities, but that is not my corporation's mandate. When this is passed could I find somebody taking me to task in a court of law because clearly we have preferential hiring, and clearly it discriminates against other people?

CHAIRMAN (Mr. Bell): Mr. Guthrie, as I understand the intent of this section it would accommodate, say for instance, a women's shelter who wanted to hire a shelter worker and felt that it should be a woman in that role. This would allow them the ability to preferentially hire a woman for that role because it is directly related to the kinds of things they are doing. I think the key here is that they have to be non-profit. I do not think it would speak directly to what you are referring to. I assume you are in the business of making money, so I am not sure that you would fall under this category, but maybe I will ask Ms. Peterson for some clarification. Ms. Peterson.

MS. PETERSON: That is actually a very difficult question. Can you tell me first of all where the obligation for preferential treatment arises from?

CHAIRMAN (Mr. Bell): Mr. Guthrie.

MR. GUTHRIE: All of the oil and gas companies that work on Inuvialuit land -- the presidents of those companies have signed cooperation and benefits agreements with the IRC. I cannot remember the exact wording, but in those cooperation and benefits agreements it clearly gives preference to Inuvialuit employees and Inuvialuit businesses. Do not misunderstand me, I do not have any quarrel with that, but my question is -- when this is passed -- because frequently we do bypass other employees and frequently we do discriminate against other potential employees in favour of Inuvialuit. There is my question. Could companies here find themselves in some future difficulty?

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: The agreements that have been signed, do they arise from the land claims agreements that were originally negotiated, that allow those authorities to be translated through those kinds of cooperation and benefits agreements? Is that where they are stemming from?

CHAIRMAN (Mr. Bell): Mr. Guthrie.

MR. GUTHRIE: That is my understanding, yes.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you. One of the sections of the Act, section 2, says that: "Nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982." So there is a general statement that aboriginal rights will be safe-guarded through this piece of legislation. That particular section is maybe not as specific as it should be, particularly with reference to land claim agreements. It is hard to tell how it is going to be interpreted by the commission and ultimately the courts probably in any appeals, but I think the intention is there to recognize and respect both the section 35 rights and, I would suspect, the negotiated rights as well. Now a complaint will test that process definitely, so it is hard for us to speculate how that would end up, but I think that is part of the intention of the legislation.

CHAIRMAN (Mr. Bell): Mr. Guthrie.

MR. GUTHRIE: Thank you, I think that helps.

CHAIRMAN (Mr. Bell): Okay, thank you. Anyone else interested in making a presentation? I do not see anyone else, so we will take a 10 minute break and come back and see if we have anyone else. If not, I think we will adjourn until tomorrow morning. Another question for us, Mr. Guthrie.

MR. GUTHRIE: Thank you, I meant to ask this earlier and it wasn't written in the summary I had so I had forgotten about the pay equity part of this legislation. I wanted to ask some questions about pay equity. Would somebody from the committee reiterate out loud what wording there will be regarding pay equity in this legislation, or what is being recommended?

CHAIRMAN (Mr. Bell): Okay, I think I will get Ms. Peterson or Ms. Fenney to give us a summary of the pay equity component of this bill as put forward by the government.

MS. PETERSON: This bill recognized equal pay for same or similar work, which is one of a number of possible ways of dealing with this issue. It is not equal pay for work of equal value, which is generally accepted to be a higher or more onerous standard of equal pay. Equal pay for work of equal value requires that different kinds of jobs be evaluated, as you probably know, on different criteria like responsibility, technical expertise or educational requirements and so on so that you can compare different kinds of jobs and pay people who do different kinds of jobs an equal amount, recognizing those kinds of factors.

Equal pay for same or similar work, which is what is contemplated by this legislation, simply means that you compare the kinds of work that people do, and if the kind of work that they are doing is same or similar then they ought to be paid same or similar. It does not require that kind of analysis of aspects of employment that what is called pay equity requires, or equal pay for work of equal value.

CHAIRMAN (Mr. Bell): Thank you. Mr. Guthrie.

MR. GUTHRIE: Okay, thank you for that explanation of that, that helps clarify it in my mind. I understand there are certain groups that are pushing pretty hard to get equal pay for work of equal value into this legislation, so I would like to speak on that as a small businessman. I think I have had the advantage of working for large corporations, large oil companies and large Crown corporations, and I have also had the advantage of having worked in quite a few places around the world, including two countries of the ex-USSR. This has given me lots of opportunity to think over how well our system works here in Canada. I guess if there is any conclusion I have reached in my years of travel and my years of work is that the democratic and free enterprise system works pretty well if you do not screw around with it too much.

As a small businessman, this equal pay for work of equal value really causes me great concern. I know the effort it takes in a major oil company for supervisors and mangers just to try and write up job descriptions and make sure that within their companies equal pay for same or equal work is taking place. I think that even us small companies can live with that kind of legislation, but if we take this next step that is so subjective that it will cause even the smallest businessman to have to have somebody on their staff -- which is overhead which small businessmen generally cannot afford very much of -- to try and write up the very lengthy and descriptive job descriptions. I think they will be exposed to a litany of complaints forever from their staff because the people lower on the totem pole will never ever agree that their job should not be equal in pay to some other job.

In the ex-USSR and Soviet Union I have lots to do with trying to sort this out. I went there when communism was still in power, saw communism fail and spent the next two or three years trying to work in that system and trying to make sense of it. They took this equal pay for work of equal value to the extreme. Consequently doctors were paid the same as labourers. That is where it ended up. Consequently they had the poorest medical system in the world and they suffer from it to this day. When you pay doctors the same as you pay labourers you no longer get good, intelligent and hard working people wanting to be doctors.

I have probably said enough on it, but I certainly think as a small businessman that this will be very difficult for us to administer, and I think it will make Canadian companies generally less competitive. Thank you.

CHAIRMAN (Mr. Bell): Thank you. I think this is a topic we anticipate a lot of discussion on. I think you have raised some very good points. I think it needs a lot of thought. In my opinion I certainly think that we do not want something that is so onerous that we have a situation, as I understand they do in Ontario, where they have the most stringent tests yet most businesses do not comply. Most small businesses cannot comply, as you say, they do not have HR departments and they are not going to have complicated job evaluation schemes. I think they are rethinking their legislation now, and I am wondering if, in fact, this is working at all. Maybe I will go to members to see if they have any questions for you on the different test between same or similar work, or equal pay for work of equal value. It is something that it is hard to get a handle on possibly first and initially, and I think that until you give it some thought the issues are not altogether clear. Are there any other committee members who have questions for Mr. Guthrie on this? Maybe I can ask Ms. Peterson or Ms. Fenney if they have any questions or anything to add. Ms. Peterson.

MS. PETERSON: I had a question for Mr. Guthrie, and I understand completely what you are saying in terms of the burden that it would place on small business. I am a small businessperson myself so I have some appreciation on that. Would it make a difference to your thoughts about that if pay equity provisions were limited to larger employers? Would you feel differently about that?

CHAIRMAN (Mr. Bell): Mr. Guthrie. I think some jurisdictions have contemplated certain sized businesses having to meet the tougher standard or possibly the image between public servants and private business having different standards.

MR. GUTHRIE: No I do not think I would. I feel strongly that the market works well and it should be left to the market. One other thing I always think about is the strike where we can fire 30,000 air traffic controllers. This was a similar issue. The air traffic controllers in the United States through their union decided that they should have equity with pilots, and that is what they went on strike about. It did not seem to matter to them that -- I guess from a simple point of view if the pilots make a mistake they die. If air traffic controllers make a mistake a whole bunch of other people die. To me, very simply, there was a huge difference in those two jobs. But as you may remember, 30,000 air traffic controllers -- whatever the number was, it was an immense number -- went on strike and they all ended up getting fired and none of them ever got their jobs back.

That is another example of people who were trying to say, "Our work is equal to those other people's work." It was clearly wasn't because if it was they would still have their jobs. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Guthrie. I do not see any other witnesses at this point. We are now at 8:00 p.m. I think we will recess until tomorrow morning at 9:00 a.m. I think we will post a sign-up sheet again on the door and see if we get any takers. I do not know if anyone can get into the building during the middle of the night, but we will do it anyway. Thank you again, Mr. Guthrie.

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September 6, 2002

CHAIRMAN (Mr. Bell): Okay, we will reconvene day two of the Standing Committee on Social Programs public review of Bill 1, Human Rights Act, here in Inuvik. We have committee members Mr. Lafferty, Mrs. Groenewegen, Mr. Dent, Mr. Braden. I am Brendan Bell. We have our staff Mr. Inch, Ms. Peterson and Ms. Fenney. I believe we will have a witness here today. Mr. Nerysoo, if you would like to come forward and take the witness stand we would love to hear from you. Also welcome to Mr. Roland.

MR. NERYSOO: Thank you, Mr. Chairman. I did not want you to come to Inuvik and at least not answer some questions. Firstly let me make the comment that I think the efforts and undertaking that the Assembly and the government is pursuing on human rights legislation is, in my view, long overdue. I think that it is an important piece of legislation that ensures the protection of individuals from discrimination. It is an effort that other past governments have introduced but have not pursued simply because there have been a number of issues that have been raised by the indigenous people, the aboriginal people, on the manner in which human rights might somehow affect collective rights.

On that note, Mr. Chairman, if I firstly might ask a couple of questions and you might respond, or if you do not have the response, at least in your presentation to the Assembly in terms of the review of the committee and the report that you might undertake to respond to them. Firstly the point that I made about the need to ensure that individual rights are enshrined, could you maybe advise me if there ahs been any analysis done with regard to the legislation as to how the legislation dovetails with the notion of collective rights? Secondly, has there been an analysis of the Act itself and land claim agreements in terms of those rights that are protected in those agreements, and whether or not there has been an effort on the part of government to ensure that the legislation itself does not undermine the land claim agreements?

CHAIRMAN (Mr. Bell): Certainly, and I think I am going to ask Ms. Peterson to take us through a bit of a brief on this. We have discussed to some degree the part of the bill that attempts to ensure that those rights are not usurped. I think that the government has put a lot of thought into this part of the bill. Perhaps, Ms. Peterson, you could talk a bit about collective rights and how this will possibly impact that.

MS. PETERSON: Thank you, Mr. Chairman. I think that Mr. Nerysoo has raised a really difficult issue and one that is going to require some sorting out through both any human rights commission that is established by this legislation and ultimately the courts review of that.

There are a couple of sections of the Act that are pertinent to this. One is section 2, which attempts to recognize and respect aboriginal rights, and section 35 rights. Our legislation is somewhat distinct in that specific reference to those rights in the Act. Not all other legislation in other jurisdiction makes that reference to enshrine and ensure that aboriginal rights are not abrogated under the Act. The other aspect of the legislation itself that is helpful on this point, which is found commonly in other legislation throughout other jurisdictions, is the section that allows affirmative action programs to continue and to not constitute discrimination under the Act. That is particularly important in the Northwest Territories where, through not only various government policies but other policies that have been developed in the resource sector and the private sector, speak to affirmative action, particularly with respect to aboriginal participants and attempting to redress the disadvantage that has historically been experienced by that particular group.

I think human rights legislation traditionally tends to favour individual rights over collective rights in that it speaks to, traditionally, the freedom of any individual to live their life with dignity and to be free from discrimination on the prohibitive grounds that are set out in the legislation. That being said, however, there will be some, I think, split jurisdiction on some of the issues. It remains as much of a question as anything else how some of these will be worked out.

For example, and just speculating on this, it is sort of my best guess of how things might be considered under this Act -- if an individual were to allege a human rights complaint against a band organization, that would likely be handled under this legislation and within the parameters of it. Whereas if a band or aboriginal organization itself had a complaint which it wished to lodge, because of the federal jurisdiction attaching to those organizations that would likely be handled under the federal regime.

As to how difficult questions will be handled in terms of a clash between some values as against other values remains to be seen. This piece of legislation will be interpreted ultimately by the courts probably, and the courts will be guided by judgments that have been rendered in other jurisdictions that deal with these matters. It is quite possible that there will be instances of clashes between collective and individual rights. However, that being said, I think the Act goes some distance to try to recognize the uniqueness in the Northwest Territories of the place of aboriginal persons and the place of affirmative action programs in this jurisdiction. Those both appear -- I wouldn't say prominent but important parts of the legislation that is on the table right now. I do not know if that helps you at all.

CHAIRMAN (Mr. Bell): Ms. Peterson, can you direct us to the section of the bill that speaks specifically to the section 35 rights.

MS. PETERSON: Section 2 speaks to that. "Nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982."

I believe that Party 6, section 67, speaks particularly to affirmative action programs.

CHAIRMAN (Mr. Bell): okay. Thank you, Ms. Peterson. Mr. Nerysoo

MR. NERYSOO: Thank you, Mr. Chairman. If I might just make a couple of comments on the non-derogation section. My only comment and concern about using that particular clause in that it appears in land claim agreements or in the Constitution, the difficulty I have with that section and its use is that unless it is clarified there can be initiatives on the part of government that undermine that particular section. I say it not that governments intentionally do it -- I do not want to suggest that -- but there are efforts or initiatives that sometimes undermine that clause. Passing of legislation that gives protections for other rights in contradiction to land claim agreements can sometimes create that problem. While I recognize the intent of government in including it in this legislation, I think what will assure that commitment and effort on the part of the Assembly and government to take steps that show that government is serious about non-derogation initiatives that government might undertake -- that would be for instance you might pass a piece of legislation. I do not say that in this particular case is here, but the human rights legislation may, in fact, undermine commitments in land claim agreements.

I will give you at least one comment on affirmative action, and more specifically it is in a section in the Gwich'in Comprehensive Land Claim Agreement, and what makes it difficult is that there has been no effort or no initiatives undertaken to deal with a number of these issues. Let me give you one section in the Gwich'in land claim agreement which is chapter 10.1(2)(d). The section basically says that, of course, government economic development programs shall take into account and then the object is that the traditional Gwich'in economy and Gwich'in shall be economically self-sufficient. In 10.1(2)(d) this is what it says, "Encouragement of employment of Gwich'in in settlement area including employment in major project development in the public service and public agencies. Accordingly government shall prepare plans for the training and employment of Gwich'in, including the development of measures to recognize the special needs of the Gwich'in for pre-employment training and basic skills. Government shall review job qualifications, recruitment procedures and remove inappropriate requirements in respect of cultural factors, experience and education."

Because there has been, in my view, no effort on the part of government to do an evaluation of the jobs that are in this particular region, in the Gwich'in settlement region or in the Mackenzie Delta, and because we have not had an evaluation of what those factors might be for employment, despite the fact that the legislation provides for affirmative action. There are two different problem here. One is that systemic restrictions on employment and barriers have not been taken into consideration to evaluate whether or not by removing that is simply an affirmative action or whether or not it is, in fact, a removal of what you might say are some of the restrictions on employment in the particular region.

Affirmative action in may respects is intended to provide an opportunity for those people that are less recognized and included in the public service, and so in this case these two issues are totally different. One in terms of removing systemic barriers and the other one in terms of encouraging employment.

What I was kind of curious about. Here is an area where if it is not recognized and not dealt with, could cause problems you might say in the future in terms of applying what you might say are constitutionally protected aboriginal rights versus legislated or policy directed initiatives on employment. These are two things, and I was wondering if at the very least the committee might undertake an evaluation of those two and determine whether or not there are inconsistencies in the legislation, or whether or not the legislation can provide some kind of vehicle for implementation of the agreement while not in any way causing problems between the human rights of an individual versus what you may say again is the removal of systemic barriers for employment in government.

CHAIRMAN (Mr. Bell): Thank you, Mr. Nerysoo. I think you make a very good point and certainly we have had some discussion about how socio-economic agreements between our government and various First Nation groups, or impact benefit agreements between industry and First Nations will, as you say, dovetail with this type of individual rights legislation and how the two will, hopefully, not conflict. As we have indicated a lot, it will be left to the commission and to the courts to interpret this legislation. I will ask committee members if they have any questions for you, but I did want to ask you just quickly so that I can be clear. As it speaks to section 2, were you making the point that you thought this needed to be more specific and detailed so that it was more easily interpreted and not so broad and not so vague? I think this is something that probably needs some discussion. We have seen some legislation attempt to keep things broad and wide open so that they are all-encompassing because if it is not in the legislation it is deemed to be out sometimes. In other sections maybe it makes more sense to have it specific and detailed. As it speaks to section 2, I wonder if you could again give me your suggestion. Thank you.

MR. NERYSOO: Thank you, Mr. Chairman. I am not opposed to what you may say is that particular section in the legislation. My difficulty is that those being so broad and so general -- and even though it comes from what you might say is section 35 in the Canadian Constitution the difficulty is that governments can undertake initiatives that undermine that notion of protecting or non-abrogating agreements simply by -- for instance if you and I read the Gwich'in land claim agreement we both have different views and interpretations of the agreement. So government can initiate their view or their understanding of the agreement without basically agreeing with the Gwich'in on what that interpretation might be.

What happens is that the lowest common denominator then is initiated, not the arrangement and the understanding between the two parties. This is not simply a matter between the Government of Canada and the Gwich'in, it is also the Government of the NWT which is a signatory to the Gwich'in land claim agreement. There is, what you might say, is a fiduciary obligation on the part of the GNWT to ensure full compliance and full recognition of the agreement itself. This is one of the issues even under chapter 10 which is the economic measures. Thee has still been no agreement or understanding reached between government and the Gwich'in in the Northwest Territories on that particular matter.

I guess i was raising it and just putting the Assembly on notice that the efforts in section 2 are okay but the difficulty is trying to interpret really what that means. The point that you made I think is a good one. It is so broad as to say that anything is possible, and yet the land claim agreements in some cases are more specific than that, and even the land claim agreements do not always give clear direction on what the understandings might be. I think my problem is that often times government undertakes initiatives at the lowest common denominator and not at the most significant or the best scenario between both parties to an agreement. That was why I was raising that particular point.

CHAIRMAN (Mr. Bell): Okay, very good. Thank you, Mr. Nerysoo. Any questions from committee members for Mr. Nerysoo? Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I know that during the years I have been a Member, for 11 years there has been some discussion about the concern about collective rights whenever we start to talk about a human rights act. I think it is going to be absolutely essential that, as part of our report, we deal with that issue. I believe I have heard our counsel tell us that her opinion is that because section 35 rights are constitutionally protected, that would supersede anything that our Legislative Assembly could bring into force. There is probably a fair amount of protection there.

I think that she has also indicated that we are probably going to be faced with some interpretation by the courts. I think that Mr. Nerysoo has brought up a good point, and I think one of the things we can do to help perhaps assure aboriginal First Nations of our intention here is that in our report we have some discussion of the intent of the law. If and when it does come to court the discussion surrounding the implementation of the law will often be used by the judges and the courts to decide on what the intent was and colour their decisions. I think that Mr. Nerysoo has brought up a good point and I think that our committee then has to try and find some way to bring this sort of discussion into our committee report. We need to make sure that we question the Minister to make sure that the government has had a very good look at the issue of collective rights and whether or not section 2 is adequate to protect those rights, and to respect the constitutionally protected rights that aboriginal First Nations have through their land claims.

I think we have a role to play here, and I think that we can take Mr. Nerysoo's advice and use that in writing our report to help assure aboriginal peoples that the courts will see what our purpose was when we were doing this.

I would just like to ask Mr. Nerysoo, do you think that that sort of approach could help to resolve concerns?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Nerysoo.

MR. NERYSOO: Thank you, Mr. Chairman. Yes, I think that that would be helpful at least in highlighting what the issue might be and the need for government to be more clear on how they intend to deal with that particular issue. I do not say that the legislation is all the solution to solving the problem. Part of it is a policy issue and another is the interpretation of the agreement. Another suggestion would be to try to ensure that the Government of the Northwest Territories has some understanding so that both parties, and Canada included, would have an understanding at least, is that…

-- Break in Tape

…that is another way of dealing with it.

Could I just make one other comment maybe on this issue of collective rights. Personally I think that the collective rights in the agreements are not clear. They are basically related to land and resources, and generally that is how all those are. I do not want to give the impression to anyone that collective rights should somehow be the basis of overriding individual rights of even the beneficiaries of the agreements. Often the suggestion is that because you have a collective agreement that that collective agreement is not a vehicle for protecting the rights of individuals. Even the land claim agreements assure the protection of individuals. Those collective rights that are enshrined in the agreements come from the individual rights of each individual Gwich'in, and I can only speak for the Gwich'in. I am not going to speak for anybody else.

I think the difficulty I have, and I think the advantages of human rights legislation, is that it assures individuals in the presence of a collective NWT that their interests and their rights are not going to be ignored or overridden simply by individuals, by governments or by industry, and I think that is a good thing. There is a need for that. That personally is how I see some of the efforts and that is why I made the comment earlier that the human rights legislation is an important piece of legislation, simply not for governments but also for individuals. In my view, I just want to make that particular comment.

Can I make one other comment on process. I have not ready all the details of the process here, but one comment I would make -- and maybe it is because I have encountered some other issues in the land claim agreements -- is that I hope you are making the process simple for individuals. Not complex but simple, simple to use and simple to understand. I do not mean so simple that it is fraught with abuse. I mean simple so that those people who have real significant cases and issues to bring before the Human Rights Commission do not find it so complex that they are scared away from using the process to ensure the protection of their rights.

I am just kind of curious, Mr. Chairman, you might maybe address that particular matter and then, if nothing else, maybe you might want to raise that matter or review it in committee so that the complexity of the process is not something that is a barrier to individuals using the legislation for whom, in fact, it is being initiated.

CHAIRMAN (Mr. Bell): Thank you. I think that is a very good point. I think that certainly the intent of something like this is that we do not want a situation where you have to be a lawyer yourself to bring forward a complaint before the commission, and to be able to wade through, as you say, a very complex and onerous regime. I think the other key point is that people often get discouraged if things are not expeditiously handled and if these things drag out for years on end. I think it is important that we have an expeditious and certainly thorough and yet clear process that is not so cumbersome and complex, and that is a point well taken. I think that is something we have had some prior discussion about.

Maybe I will ask Ms. Peterson or Ms. Fenney if they could talk about the intent here as far as the process is concerned, and how this legislation hopes to set something up that will not be so difficult for people to understand, manage and work with. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I agree with what you and Mr. Nerysoo have said because the ability of the process to be friendly to people who may want to use it is really a question of access, and access becomes a question of justice for people who have complaints. So you can have a very nice piece of legislation that sets out very nice principles that everyone agrees with, but if it is not friendly to the people who want to use it, it is not very useful.

This legislation provides for a complaint based mechanism, which is common in quite a few jurisdictions -- in fact the majority of jurisdictions -- so that the person can make a complaint to the commission which is reviewed by the director and there is some capacity in the legislation to try and allow for the solving of complaints by meditative processes as opposed to going strictly to a more litigious role. Human rights commissions in other jurisdictions as well are looking more and more to settlement and mediation, alternate dispute resolution, mechanisms as being a more valuable means of addressing these kinds of issues. So that exists in the legislation as a means of trying to resolve a complaint.

The director has a lot of discretion in terms of using that avenue, or referring a complaint for investigation or adjudication. There is a capacity of the commission itself to carry the complaint so that the burden of that is not left with the persons complaining themselves. There is some advantages to that. There may be some advantages to the legislation better articulating in what circumstances the commission would carry a complaint for an individual so that that is clear. Where there is significant public interest or a detrimental affect, all kinds of frameworks that can be placed on that.

Right now if the commission does not carry the complaint, under the legislation as it is drafted, the individual is left to their own devices. That can itself be a barrier for people accessing the remedies that they have.

The other aspects of that access question is, of course, resource based and the extent to which other systems are allowed to work cooperatively with the Human Rights Commission. For example, amending the legal aid legislation to specifically allow funding for human rights complaints would be one aspect of the government committing itself in other domains to this legislation.

Right now as the legislation reads I can see that there are some barriers in it to people accessing it. Much will depend on, once the commission is established and once the director is in place, how they make the legislation work for the people whom it is intended to work for. That will be entirely key.

Apart from those comments, I also have some questions for Mr. Nerysoo, but I leave it at that for the moment.

CHAIRMAN (Mr. Bell): Certainly I think the committee sees the advocacy role of the three or five member commission as being something that would be very important. Also I think it is often the case that people may not understand their rights, and this commission as envisioned has a large public education and awareness component to it. I think that that will be critical and go some ways towards helping people understand their rights, their abilities and the process under this legislation. Mr. Nerysoo.

MR. NERYSOO: Thank you, Mr. Chairman. One other comment I would make on process would be that the government does not see the access exercise and the implementation purely from a central location. I think we have had some really good experiences where we have learned, for instance, and the efforts of the Workers' Compensation Board. While it is a central agency they are making efforts to ensure that there are offices in areas where there is significant development occurring.

The process in this particular case where it applies to individuals I think is even more important to ensure that there is some kind of continuous access for individuals. It is very difficult – even you yourself in this exercise of visiting communities to hear comments from individuals who might raise interest or be concerned about the issue of human rights realize that it is not that they are not interested in participating, but they feel sometimes that their participation is not really being heard. One of the things that is important in the Human Rights Commission is to at least give access to the various regions so that they have a vehicle. Maybe one or two offices, whatever. I do not know what the structure is going to be, but I just wanted to raise that issue. There has to be some vehicle for accessing this process, at least for the individuals in some of the regions.

I do not know how you are going to deal with that because as a committee you are not always involved in the actual direction regarding location, but you might be able to at least note that it is one of the issues that needs to be addressed by government.

CHAIRMAN (Mr. Bell): Thank you, and I think that is important that access has to be included obviously, and we have to make sure that you either be present in Yellowknife or living in Yellowknife to get the ball rolling on any of these issues. I will ask committee members if there are any questions for Mr. Nerysoo or points of clarification. Okay, Ms. Peterson I will allow you to ask some questions and also come back to Mr. Nerysoo if you have any other points you would like to make. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Mr. Nerysoo, I hope you will forgive me for taking advantage of you while you are here and your expertise and experience in government, and also with the Gwich'in. It is impossible for me not to pick your brain while you are sitting in front of us. Going back to the questions of individual and collective rights, recognizing that you have probably just briefly looked through the draft bill, do you see any aspects of the draft legislation that, in your view, constitute a clear conflict with some of the rights and philosophy contained in the Gwich'in land claim agreement that causes you concern or you may feel is a problem waiting to happen at this stage?

CHAIRMAN (Mr. Bell): Mr. Nerysoo.

MR. NERYSOO: I just make the comment that I have not personally really reviewed the legislation. I was just quickly undertaking to make a number of comments that I thought the committee needed to address. I do want to say that the legislation itself, in at least incorporating the notion of collective rights -- and this is a difficult problem for governments -- people forget often that collective rights do not come from the collective itself. It stems from individuals. The Gwich'in Nation itself is not the Gwich'in Nation simply because everybody has agreed to it. The body is in existence by itself. The people had to agree that it exists, and that land claim agreement is a tool by which the Gwich'in have been brought together, but in the agreement those rights that are agreed to are applied individually. That is why the importance of the human rights legislation is that it incorporates that notion that collective do not override the individual.

Maybe to simply put in better context in the Assembly, the collective Assembly cannot pass laws simply to ignore the rights of individuals. In my view the land claim agreement is basically the same. It is not intended to be a vehicle that ignores the protection of rights of each of the individuals that are part of that collective. Sometimes we try to give the impression, or at least use the argument, that those collective rights overrule the individual, which in my mind is not a good legal basis for arguing that case. Secondly if you read the agreement, in fact, it is quite clear that there are only certain areas in which those collective rights exist at, what you might say, is at the expense of individuals. One is on land, two is on resource ownership and three is on compensation. Generally those are things that are collectively owned. But the application of the agreement is based on individuals and the protection of the rights of those individuals.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you. One of the areas you had raised as a concern was that, for example with respect to the Gwich'in land claim agreement, there were certain processes that were written into that agreement that required the government's not only attention but commitment to them in order to fulfill the philosophy and the intent of that land claim agreement. Some of those aspects have not, I am gathering from you are saying, been adequately undertaken, if at all, by the government.

Does this legislation provide any comfort to you in its specific section that says that the government itself is bound by the legislation. As most human rights acts do, they bind the passer of the legislation to the same obligations and commitments to human rights so that it is not the legislation just binding other entities such as employers or as providers of services, but the government as well. Does that help at all, or does it not address the fundamental commitment issue that you are concerned about?

CHAIRMAN (Mr. Bell): Mr. Nerysoo.

MR. NERYSOO: Thank you, Mr. Chairman. No, I think that is an important principle to include in the legislation, that you cannot simply be the ones that are passing the law and not having it apply to you. People probably look at government as -- if you are telling us what to do then we expect you to live by the same rule sort of thing. That notion and that basic principle is an important one, and I think it should be applicable. The one other issue that I wanted to raise is that it is fine to put in place a vehicle of that type, in other words the application to government. The problem that I have is that you already have some existing laws in force that, in my view, do not always give confidence to the public that government is bound by the same rules.

Maybe if I could apply one, the landlord and tenants legislation is a good one. In my view it seems that government just somehow, even through the Housing Corporation, does not have a vehicle to apply that particular legislation to itself. Maybe it exists, but the fact is that when you are a tenant of a public housing association it makes no sense to me, for instance, that the association is made up of non-tenants. In other words, anybody could be part of the association and the board. I just cannot comprehend how a person can be part of a tenants association when they are not a tenant. Most public housing associations have individuals that are not even tenants, and so the debate between government and their policies on housing is between non-occupants and government, yet the problems that arise come from tenants normally.

When I think about that particular legislation I am hoping that we learn from that, that government should not somehow step outside of what its laws are. If you are going to apply it, then review what you are already doing and see the other problems you have and note how this legislation is not going to run into the same kinds of problems.

CHAIRMAN (Mr. Bell): I think you made the point earlier that governments dealing with their legislation and policies tend or have tended to boil things down to the lowest common denominator and adhere maybe to the letter of the policy or to the letter of the law while ignoring the spirit and the intent. I think that is something we need to be careful to make sure that we are not doing. Ms. Peterson, any further questions for Mr. Nerysoo?

MS. PETERSON: I do have another question for Mr. Nerysoo on section 2 of the draft legislation and your comments about the interpretation and application of section 2. In your view, would section 2 be better worded to specifically refer to land claim agreements to which the Government of the Northwest Territories and aboriginal organizations in this jurisdiction are a party? Should there be specific reference to land claim agreements in that section in your view, or are there problems with that?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Nerysoo.

MR. NERYSOO: I think you could include it, but the difficulty would be that there are regions that do not have land claim agreements in existence, or for that matter are in the process of renewing the treaty obligations of government going through that treaty process. I think I would just caution committee members of going through this exercise all the time. In other words every time an agreement is -- I do not say that it is necessarily onerous, I just do not know how many times you want go into the human rights legislation to amend it. Maybe you might include a section or a general statement in there that says that the Government of the NWT and its agencies, or whatever, must recognize or ensure the full implementation of any land claim or treaty agreements that they are party to. That might be a way of incorporating it. It may not necessarily be a land claim agreement, it may be Treaty 11 or Treaty 8 renegotiation or that process. It basically gives you a general statement saying that if you sign an agreement then you are obliged to full implementation of it. That would be the way, I think, to try to incorporate it. I do not have the words for that because I have not really given clear thought to that.

CHAIRMAN (Mr. Bell): Thank you, Mr. Nerysoo. Any further questions or clarification, Ms. Peterson?

MS. PETERSON: Just one in an entirely different area, and this is not something that you have raised, Mr. Nerysoo, but I am interested in your view on it. We have had some indication of concern from individuals that appointments to the Human Rights Commission, and the appointment of the director, are made by the Legislative Assembly. Some concerns about partisanship, and some suggestions that those appointments should be made on the basis of nominations from interested sectors, whether employers, disabled persons, aboriginal persons or elders, people who are likely to be affected by the legislation. There has been a suggestion that the Legislative Assembly would be required to make those appointments from specific pools of nominated individuals that are representational, both by region and perhaps economic status or otherwise. Do you have any thoughts on that particular appointment process?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Nerysoo, maybe you could give us your thoughts.

MR. NERYSOO: I was going to make a comment on that particular matter, not necessarily the issues that you have raised, but I will make a comment to that in a second. My own personal view about this notion of appointments is if the idea -- and this is how I view the Human Rights Commission and I just quickly glanced over it -- my own view is that this is a quasi-judicial body. If you expect it to be credible in the eyes of individuals and the people and public of the Northwest Territories to conduct itself in a fair manner, then the least amount of political interference the better it is for everyone.

The other issue is that for the Human Rights Commission you cannot simply pick someone off the street for the job. If you do that then my view is that you had better train the person to be able to conduct a quasi-judicial review in which judgments are being written that can either be challenged in a court of law or can be questioned on their fairness and the legal integrity of that particular judgment. That has to be clearly made known to those people who are being appointed. You cannot go into an office of this type -- for instance if Richard Nerysoo was appointed as a judge or as a commissioner from the Inuvik region, I am not there to represent the people of Inuvik. I am there to ensure that the legislation is applied fairly in Hay River, Colville Lake or Yellowknife. People have to know that I am there to do the job of applying the legislation.

In my view this notion of being appointed from regions or particular groups, you are not there to represent particular groups. You are there to ensure and enforce this legislation and its fairness on everyone, whether it is aboriginal or non-aboriginal, whether it is Canadian citizens or newly immigrated Canadian citizens, whatever. People have to be at least assured of the fairness in the application of laws is going to be fundamental.

The other thing that I just would caution again the committee members here -- and I guess from my own recent experience I say this -- if you are a friend you are appointed, if you are not a friend you are not appointed. I think the difficulty with the notion of the Assembly being involved is that you politicize the exercise. I am not saying that that is the case in every situation, but I am just saying that that may be the public impression. You have to create a process where if the Members of the Assembly are involved, there is some kind of criteria and some kind of measurement that is given to individuals that are being recommended to Members for consideration.

Part of that is, as I said, that if you are going to be appointed you have to understand the job is not about representing individual regions or groups, it is about maintaining and protecting individual human rights and ensuring that the process has its integrity and its independence, even from Members of the Assembly. That it has its integrity and that its judgments are quasi-judicial in nature, and they have to uphold the legislation. If they do not and if they begin to politicize the exercise of the Human Rights Commission, then you have some serious problems because no one is going to believe the process.

I think that in your own minds, you are creating a process that is going to have integrity and ensure the individual on the street that their rights are going to be protected in this exercise. That is my comment about it. The only other thing that I would suggest in this exercise is the point that I made earlier. The Human

Rights Commissioners, if nothing else and if you can do it in the legislation, they have to be trained for the job. They have to be knowledgeable about the law and they have to be knowledgeable about their responsibility of applying it. The other thing is there should be a training process that allows them to develop,

The only other suggestion I noted in here is that commissioners are between three and five years. My problem with the notion of it is three years is fine, but how many cases are you going to hear? The other thing is once you train someone to do the job, is that process going to be purely political after that? Because you train someone to do a job, maybe it is not always in your interest to go back and say that that individual is not capable of doing their job after you made the commitment.

I think that while the idea of term limits might be a good thing, I do not think that you should simply go through the exercise and, for political reasons, bring in and out human rights commissioners. You do not appoint judges at the behest of the Assembly, there is a debate sometimes about the qualifications of individuals. Once the qualifications have been noted and you make the appointment, you do not ask the judge to step down simply for some reason that he or she did not apply your political views.

CHAIRMAN (Mr. Bell): Thank you. I think it is critical that it is not only independent and apolitical, but that it is seen to be that way. Certainly, I know other jurisdictions have varied mechanisms for appointment process and that is something we will have to discuss and make a recommendation to the government on. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. On this issue of appointment, I know there has been some discussion among members of the public about this process right now. I just wanted to ask Mr. Nerysoo, he has some experience both from the government side and in the Legislative Assembly, and what we are struggling with is just trying to find some way that appears less political than anything else. Would he not agree that a process that requires the Assembly rather than the government to appoint is less political than what the public might think, simply because it is harder to have an agenda and get all 19 Members to agree to that agenda when you are trying to appoint people. I do not know that the public understands that. I think that if you look at the appointment of statutory officers like the Conflict Commissioner or the Languages Commissioner, that sort of thing, I do not think that you can say that a political agenda was behind the appointment of any of those we have appointed in the past. We may not have always made the right choices with the people we have appointed, but I am not sure that there was a political agenda involved.

Is there a suggestion that Mr. Nerysoo might have if we do not use that type of thing? Maybe one of the issues is we can make sure their term is longer than that of the Assembly. That might be one way to make it appear like there is less than a political agenda, because if the term is extended beyond that of the Assembly they are not reporting back to the people who have appointed them. You could do that by making sure the terms were at least four years long.

Unfortunately, when some of the recommendations were heard, for instance that labour unions be allowed to appoint somebody, well not everyone in the Territories is represented by the labour unions, whereas the Members of the Legislative Assembly, well everyone in the Territories had the opportunity to select them.

I think we are wrestling with, how do we deal with this issue of perception? I wanted to ask Mr. Nerysoo if he did not agree that if it is the Assembly as a whole that has to make the selection, if the selection is not driven by government then there is less opportunity for political agendas to enter into how someone gets the nomination.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Nerysoo.

MR. NERYSOO: Well, I think the difficulty, and maybe I have had the opportunity to sit on both sides of the fence on this particular matter as a Member of the Assembly and as a Member of Cabinet, either way the difficulty is that unless the process is clearer, in other words the process for appointments, the process for identifying what you might say are the qualifications of the individual, or for that matter the experience that individual might bring to that exercise, those things are not clear. It does not matter what name comes forward, someone has to recommend that particular name. The other thing is if the process is open for other nominations from outside of the Assembly, even though someone at the end of the day makes the decision, that may be another vehicle for dealing with that so that it does not purely come from Members of the Assembly in terms of who should be considered.

I do not have an absolute answer to your dilemma. My view, if I was a Member of the Assembly, that is probably the easiest way. I will make this one particular comment. I am not critical of any individuals or anything of that nature. Either way, the difficulty about appointments by political leaders, and I am not being critical of the Assembly itself is, it is not objective. It is subjective to the political views of individuals or what the Assembly Members might agree be most relevant. It could be the idea that, and I do not say this happens in your Assembly, but it is not unusual in other exercises where Members get together and say that we should appoint this person. Another group gets together and they say, we should appoint this person and we do not want that person. At the end of the day what you get is a political exercise in those appointments.

I think people have to feel confident if the Assembly is going to do it then every name that comes forward is viewed in its merit and not purely in the political context. That is the only point I want to make with you. Nothing is perfect in any appointment we make. There are pros and cons to the exercise. There are good people we appoint and not so good people, and we only find that out later on when we have to suffer the consequences of that politically or publicly.

However you do it in this particular exercise, the process has to be transparent. It has to be open. Not only Members of the Assembly can be part of the exercise. I think names should be provided by others to be reviewed. The other thing might be if there are questions about the integrity of the process, then it does not matter who you appoint, no matter how good they are. There is always going to be this public perception that this is a political exercise anyhow.

One suggestion I might make to you or suggest to you is a combination of the public and the Members of the Assembly to review the nominations and then the Assembly makes that decision. You might want to have a committee that includes one or two members from the public and three or four from the Assembly. Their recommendations are then sent to the Assembly for ratification. That might be another way of doing it so that you have this broader evaluation happening but the decision is left to the Assembly.

CHAIRMAN (Mr. Bell): I think that is a very interesting suggestion and this is something that we are going to have to give some thought to because as you say, if there is a cloud hanging over the process and it is seen as being political, that diminishes or neuters the ability of the adjudicators to do their jobs.

Are there any other questions? I know we are running short on time here. Ms. Peterson.

MS. PETERSON: I wanted to make sure I understood a point that Mr. Nerysoo made previously that had not occurred to me in this context, so I want to make sure I understand it. You had indicated when I suggested to you that there had been a suggestion of representational nominations that you had some difficulty with that because the job of the commissioners and directors was to apply the Human Rights Act consistently and fairly to every individual in the Territories whether they were a member of that group or not.

Did I understand from your comments in that, and I do not want to put words in your mouth, that in fact if you had sectoral nominations that that could detract from the impartiality of those individuals because they might feel they had a specific interest to maintain or to represent or to put forward, if I can put it forward that way? Did you have some concern in that regard?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Nerysoo.

MR. NERYSOO: The only comment I would make is this: If the expertise of someone in labour was brought for their expertise, fine. But they are not there to represent that particular sector. if there is someone appointed from the legal community, it is not because they are from the legal community, it is because they bring their expertise in law. That in my view would be the same consideration for the aboriginal community. At the end of the day, they are not there representing the aboriginal community, they are there bringing a certain expertise from the aboriginal community that would add value as a commissioner to the Human Rights Commission. That is what they are there for. I do not think you should be appointing someone from the sectors just to represent that group of people. That would be my comment on that issue. I do not say it should not happen, I am just saying they are not there for that reason. They are bringing expertise that is of value.

CHAIRMAN (Mr. Bell): Thank you. I think the committee certainly agrees with you on that point. Any last comments you would like to make, Mr. Nerysoo, before we wrap up?

MR. NERYSOO: Thank you, Mr. Chairman. I did not think I was going to take this much time, I was just going to ask a few questions. I do say Thank you very much for giving me the opportunity to dialogue with you. At this short notice I had not studied in great detail the Human Rights legislation but I just wanted to come and make a few comments that if nothing else might lend some ideas to the committee for their own thought and some ideas I thought should be noted as issues that needed to be dealt with by the committee. I doubt very much if my comments are specific or detailed. There are many others who are going to offer some good, constructive ideas. I just wanted to thank the committee and yourself, Mr. Chairman, and legal counsel for giving me the time to respond to your questions and allowing me to make a number of comments. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you. We would like to thank you for taking the time out of the day to come out here and spend this time with us. I think you have been very insightful and given us a lot to think about. We do have some weeks going forward before we will be finalizing our report, so if there is anything in the coming week that occurs to you and you would like to get those comments in in the form of a submission please do so and we will consider it. Thank you for coming out today Richard.

MR. NERYSOO: Thank you.

CHAIRMAN (Mr. Bell): I think since we have to check out of the hotel and do those kinds of things and get to the airport, and since there are no further witnesses, I assume Mr. Roland is not here to speak to us today in that capacity, I think we will adjourn.

-- ADJOURNMENT

Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, Human Rights Act

September 9th, 2002

Fort Smith, Northwest Territories

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Deputy Chair:

Mr. Leon Lafferty, MLA for North Slave

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Witnesses:

Mr. Harry Beaver, Fort Smith Resident

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Kelly-Ann Fenney, Committee Researcher

STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Hearing on Bill 1, Human Rights Act

Fort Smith, Northwest Territories

September 9th, 2002

(TECHNICAL DIFFICULTIES – MEETING JOINED IN PROGRESS)

Ms. Fenney: Thank you. The basic purpose of the act is to prohibit discrimination in everyday life. Services like accommodations, employment, those kinds of things. The Northwest Territories Act contains a provision that says that in section 2 of the act, it says that nothing in the act shall abrogate or derogate from aboriginal or treaty rights.

There is no other legislation in Canada that has that provision and it is not 100 percent clear as to how that provision is going to be interpreted. I think the idea behind including that type of provision is to recognize that we do have a series of collective rights in the Northwest Territories, and to recognize that the purpose of the act isn't to take away from or minimize those collective rights.

In how that will ever be interpreted, if there is a clash between those two, is unclear. I think it is going to be a matter of the courts having to make some decisions for us and telling us what it is and we will have to I think learn what that means as the courts interpret it. I don't know if that answers your question.

MR. DENT: I wanted to add, because Mr. Nerysoo asked the same question and we discussed this with him at that time. One of the things the courts will use to try and decide how to read the act, they would look at the discussions. What the committee is going to look at doing is, in the committee report back from the House, include some discussion, the intent here not to (inaudible) treaty rights.

I think that will help to provide some background if it does come down to a court case.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Beaver.

MR. BEAVER: The other area that I have a question, I know it covers - I didn't get the lady's name, but human rights in general, every day life. For me, that is another question I wanted to ask. I know there are certain laws in municipalities and I know that there municipalities that make laws. Generally there are laws made by the territorial government for municipalities to govern themselves.

In Fort Smith, (inaudible) this act.

CHAIRMAN (Mr. Bell): Thank you, Mr. Beaver. It would certainly cover all constituents in the Northwest Territories.

MR. BEAVER: Thank you. One of the things, I think there is discrimination happening in the Northwest Territories, not only here but across the territories. Especially when you have the government, say the Town of Fort Smith, tax payers. When it comes to tax payers paying to improve their house or improve their yards they get taxed.

I think this whole thing should be turned around does not mean you should pay more tax. The people who do not improve their places, and keep their yards junky should be the ones who are penalized.

As a tax payer, I think people should be glad to improve their homes and be granted some kind of permission to be able to do that. But when you want him to pay more taxes because he painted his house or put grass around his place, because of those improvements the taxes are higher, but the neighbour next door leaves junk all over the yard and taxes go down. I think it should be the other way around. I feel it is a discriminatory way of dealing with it. The government should take a good look at that.

The communities across the Territories would not have so many people who accumulate junk. If you go around, you see a lot of accumulation in the different areas. The people who are there do not really care if they are keeping their yard or not.

We are the ones that pay. I think it is discrimination.

CHAIRMAN (Mr. Bell): I think you make a good and interesting point. I think one of the things that this legislation will do is set up human rights commissions so if you feel that any level of government has violated your human rights or discriminated against you, you have an avenue and a window to challenge that legislation or policy and you can take it up with the human rights commission.

I think this would be the first access that people really do have if they feel they have been wronged in some way. I think that is one of the things that this legislation hopes to address. I think you make a very good point.

MR. BEAVER: So there will be a commission set up by the Northwest Territories, or there is already?

CHAIRMAN (Mr. Bell): No there will be. Maybe, Ms. Fenney could you take us through the composition of the commission and tell us a bit about how that will work?

MS. FENNEY: Thank you, Mr. Chairman. The basic structure created by this human rights act is that it does three things. It sets out a human rights commission and the primary functions of the human rights commission is to promote human rights in the Territory, create and promote education programs and to encourage compliance with the act.

So it has a kind of public education and promotion type of role. In addition to that, the legislation creates the role of a director. That person is kind of in charge of the day to day working of the commission. That person supervises investigators and make decisions about which complaints go forward and which complaints are dismissed.

The third aspect of the legislation is the adjudication panel, and it is essentially a decision making tribunal. Once the decision is made to refer complaints to the tribunal that body is responsible for making decisions about whether something is discriminatory or not. That is something, the structure that we have set up here is something that is common to most jurisdictions in Canada. All of them have a commission, all of them have a tribunal. SO we have a very common type of scheme.

Each have specific functions in order to ensure that human rights are promoted and respected in our Territory. There was one other thing, I am forgetting now.

one of the key aspects of our legislation, and this is common to most jurisdictions in Canada as well, is that there is a process for settlement, and for mediation in the legislation. Our legislation is somewhat unique in that we allow for the possibility of community organizations to be responsible for the mediation or the settlement, dispute mechanisms, but the act does contain provisions that promote settlement rather than adjudication of any human rights complaints.

CHAIRMAN (Mr. Bell): Thank you. Mr. Beaver, does that answer the question for you?

MR. BEAVER: Yes. Thank you. The other question I have is the way you set up the commission, is it going to come from all over the place? Are there going to be a few people on the tribunal itself, is it going to be different people or are they all going to be from Yellowknife?

CHAIRMAN (Mr. Bell): We have had a fair bit of discussion around the make up of the commission. I am just looking at it now, I think when we were in Inuvik we discussed, or one presenter, one intervener made the case that there should be a regional balance on the commission and certainly there should be access to make complaints, so access to the commissioner, access to the staff, from anywhere in the Northwest Territories, it should not be an issue where you have to be in Yellowknife in order to start the process.

I think those two points have been raised. I am just looking to see if we have discussed, or if in the government bill there is discussion of regional balance. No there is not. But that is a point that has been made and that is something that this committee will be discussing and putting in our report.

Sorry. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Mr. Beaver, I am wondering if I can ask you a couple questions about your views on how such a commission could or should be made up. Do you have any suggestions for us on the kind of skills or background that should be serving on a commission like that? Could you give us some of your views on that? I know you have not had a long time to look at this or study it, but we are still interested in getting this kind of thing for our recommendations. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Beaver.

MR. BEAVER: Thank you. Here in the North, it seems like, especially from the aboriginal point of view that a lot of times we have to raise our voice before we are even heard. I think it has to be some make up of that. I think you also have to respect the elders and the youth. There has to be some of that, because even when we the elders speak, they all speak about the people that are not born yet, and we have to think about that.

Also the youth, because they are the ones who are going to come behind, they are the next law makers, the people who will be sitting around this table. They have to be trained. Things like this, there has to be some way that you can have a connection between these old people and the aboriginal people so that the representation of the commission can be spread out in a good manner, a good way, because I know we criticize sometimes if there are too many people on one side that do not represent us and I think you have to think about how the representation is in the North.

I think it is something like 25, it is only the west that you are looking at, is that my understanding? Not Nunavut?

CHAIRMAN (Mr. Bell): Just the west.

MR. BEAVER: So you are looking at something like 25 or more communities so you cannot have, I don't think you can have a chair with 25 people. I think you have to have a smaller portion of people representing regional people. There is a cross-section in every region that represents all the unique backgrounds based on race, colour and creed. You have to look at that in a kind of way of the people that are out there.

I think you guys have a hard job in front of you, especially the MLAs, to weigh that out. I think you also have to go out there and ask the people that are out there, The people out there in the communities and also in the regions. And give them a little bit of time, not say we are going to set up this commission, you have until tomorrow afternoon. That is not the way to handle it.

CHAIRMAN (Mr. Bell): Thank you. Point well taken. Mr. Braden, anything further. Any further questions for us, Mr. Beaver.

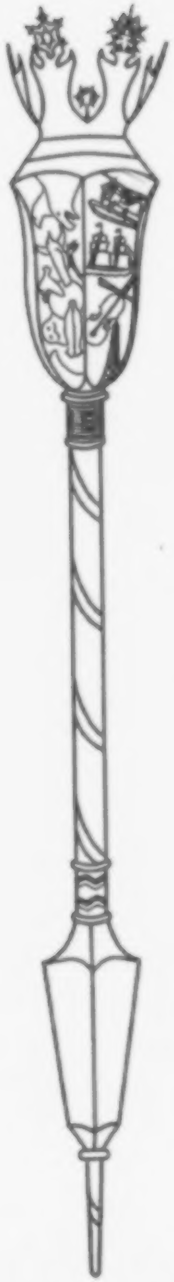
MR. BEAVER: No, again I would like to thank you guys for coming to Fort Smith. (Inaudible). We miss you guys when you are not here.

CHAIRMAN (Mr. Bell): Thank you for coming out and thank you for braving the rain. Can we interest anyone else in coming forward and making a presentation to the committee on your thoughts or concerns? Why don't take a five-minute recess, and see if there is anyone, after they have had a chance to read the materials, who wishes to add something.

-- BREAK

CHAIRMAN (Mr. Bell): Officially we can close the meeting unless there are any other further presentations you folks would like to make. Seeing none, I would like to thank you all for coming out this evening. If there are thoughts that you have after going through our information package here, please email us or call us or let us know and we will certainly take them into consideration as we are preparing our report to take forward to the government in the House. Thank you again for coming out.

-- ADJOURNMENT



Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, Human Rights Act

September 11th, 2002

Yellowknife, Northwest Territories

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Deputy Chair:

Mr. Leon Lafferty, MLA for North Slave

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Witnesses:

Elaine Keenan-Bengts, Fair Practices Officer

Fiona Traynor, Yellowknife Women's Centre

Sophie Dennison, Yellowknife Women's Centre

Barbara Saunders, NWT Status of Women Council

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Kelly-Ann Fenney, Committee Researcher

Ms. Katherine Peterson, Law Clerk

STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Hearing on Bill 1, Human Rights Act

Yellowknife, Northwest Territories

September 11th, 2002

CHAIRMAN (Mr. Bell): Good morning and welcome to the Standing Committee on Social Programs public review of Bill 1, Human Rights Act.

This is a very important piece of legislation and the committee values the input it is able to receive from the public through this hearing process. Unlike other perhaps less significant bills, this legislation has received extensive consultation and revision before it has reached this stage and our committee's review of it.

We are advised by the Department of Justice that in September and October 2000 a preliminary discussion paper on a Human Rights Act for the NWT was widely distributed for discussion and comment. This document was sent to 16 organizations who were thought to have an active interest in human rights issues and it was further distributed to 38 aboriginal organizations across the Territories.

In November 2000 the first draft of the Human Rights Act was tabled in the Legislative Assembly. Following this, a brochure in the tabled act as well as the legislation was again broadly distributed to an expanded list of interested parties of approximately 115 in number including organizations, aboriginal governments and councils and municipal councils.

In the summer of 2001 community consultations were conducted on behalf of the Department of Justice in ten communities. As well, specific consultation meetings were conducted with approximately 30 representatives of municipal, aboriginal, labour and other organizations and societies.

As a result of the input received from these consultations, changes were made to the act. These comments and changes were extensive, but I will mention a few of them:

- It was requested that a definition of what constitutes "discrimination" be included in the act and as a result, a number of interpretive sections were added on this point;
- It was recommended that a duty to accommodate be included in the bill so that all individuals could have the capacity to have their needs accommodated without discrimination based on human rights grounds. The revised bill built these sections into the new bill;

- It was recommended that the director of human rights need not be a lawyer and this change was made to the existing draft;
- It was suggested that the exclusion of the act in its application to domestic workers be removed and this was done in the now Bill 1;
- There was a comment that in the original draft, the director of human rights was vested with too much authority and in the revised draft of the bill the director was no longer a member of the Human Rights Commission but would sit as secretary, be answerable to the commission and answerable procedurally through the appeal process.

These are but a few of the many recommendations which were received, assessed, and in many instances added to the bill which we are now considering as Bill 1.

The task of this committee is to hear from the public as to their comments and suggestions respecting Bill 1. While the bill has received a great deal of consultation and input, it may be possible to have an act with further refinement and remodelling. For this reason, we are interested in your suggestions as to how the bill can be improved and achieve the underlying and important goals of respecting the dignity of all persons in the Northwest Territories. While this committee cannot speculate as to how the legislation will eventually be applied by the commission and its employees nor how it will be interpreted by the courts in any given situation, it is important to have a solid legislative framework through which the goals of equality can be guided and enhanced.

With that perhaps we could now hear from witnesses who wish to provide their insight and comments on Bill 1. I believe we do have a schedule. Who have we got first? Ms. Keenan-Bengts. Okay, welcome, Ms. Keenan-Bengts, if you could just and as you are approach the witness table and introduce yourself for the record when you are ready and then you may begin.

MS. KEENAN-BENGTS: Thank you. My name is, as all of you know I think, Elaine Keenan-Bengts. For the last four years one of my roles, one of my jobs, has been as one of three fair practices officers administering the current Fair Practices Act, which is our current human rights legislation in the Northwest Territories. My comments therefore come from the perspective of an adjudicator and an investigator working within the current system.

I have divided my comments into four sections basically – what is good, what causes me concern, what is missing and what is bad. These comments reflect both my own views, and for the most part although not unanimously, the views of the other two fair practices officers. Although our opinions are not always unanimous, I think I can safely say that in most cases my comments do reflect a majority of the opinion among the three of us who are currently acting as fair practices officers.

The issues I propose to address are the big picture items. There are a number of small matters, mostly drafting and details issues, that I do not propose to address here because of limited time. If the committee wishes, however, I can provide a written submission on those additional issues at a later date.

So first of all what is good. First and foremost I think one of the most positive changes is in calling the legislation what it is -- the Human Rights Act. The name of our current legislation, the Fair Practices Act, has caused so much confusion in the public. People looking for human rights legislation to address their concerns are not likely to be looking for something called the Fair Practices Act, and they don't know where to turn. Those who do find us are often disappointed that our role seems to be so much more limited than the name of the Act seems to imply.

You would be amazed at how many times people have called us and become quite literally angry with us because we cannot address an issue that they see as unfair. What does the fair practices office do if not address unfair practices after all? Unfortunately not everything that is unfair is a human rights issue, and it has been frustrating at times trying to explain the limitations of the Act. No one could tell you that more vividly than our office administrator who deals with people on a first come basis.

So first and foremost we are very happy that we will now be calling a spade a spade, and that is that human rights legislation will be called the Human Rights Act.

When of the biggest flaws of our current Act, the Fair Practices Act, is that it does nothing except provide for an investigative and adjudicative procedure. It does not provide for any educational role or function. In order for the public to be able to meet the standards imposed by a human rights act they have to know what those standards are and in some cases they will need help to find ways to meet those standards. For this public education is essential.

For this reason we are very pleased to see that the proposed legislation in section 20 makes the new commission responsible to promote human rights ideals and to develop public education and information programs. I know, having attended a number of meetings of the Canadian Association of Statutory Human Rights Agencies (otherwise known as CASHRA), that there are a lot of educational resources out there, and those responsible for public education in human rights commissions across the country are working together to take advantage of these energies within the educational sphere, and they are working very well together to create a national program. I personally applaud this addition of an educational function as one of the most important things coming out of this new proposed legislation.

We are also pleased to see an expansion of the prohibited grounds for discrimination to specifically include sexual orientation, ethnic origin, pregnancy and religion. Most of these prohibited grounds can be inferred from the Fair Practices Act as it exists. However, we would prefer to see them specified as they are in this proposed legislation so as to not leave it open for interpretation or challenge. We are also very happy to see section 14 which expressly includes harassment on any of the prohibited grounds as also being prohibited under the Act. Again this can and has been inferred from the provisions of the current Fair Practices Act, but we feel that it needs to be spelled out so as to make it clear that harassment is discrimination.

It will also be helpful to have a more clearly articulated definition of what is considered to be a disability under the Act. Defining that term, however, does create limitations, and I do note specifically that the definition of disability does not include addiction to alcohol or drugs. This is something that the committee might wish to consider. There have been a significant number of significant court decisions throughout the country which have recognized such addictions, or discrimination on the basis of such addictions, as prohibited. Several other Canadian jurisdictions explicitly recognize addiction as a disability under their human rights legislation. Others have interpreted their legislation as included them.

The way the current Act now defines the term "disability" however, I am afraid that we couldn't read into that definition of disability addiction to alcohol or drugs because you are saying that this is what a disability is. You cannot go outside that. It doesn't say that it includes these things. It says this is what a disability is. I simply bring that to the committee's attention and suggest that it might be worth something looking at.

There are a number of things that raise concerns for me in the Act. The inclusion of social condition as a prohibited ground of discrimination is a huge and ground-breaking expansion of grounds prohibited. Intellectually I agree with the sentiment of including this under the prohibited grounds. However, I note that the inclusion of social condition is far from being universally supported throughout the country, either in government or among human rights workers. I know that the members of CASHRA, those who work on a day to day basis with the human rights acts throughout the country, are divided on the issue.

Many jurisdictions have expressly rejected this ground from their legislation. As far as I know, Quebec is currently the only province whose current legislation includes social condition as a prohibited ground, and in Quebec the legislation is quite different. It is administered differently, it is applied differently and I am not sure that it would provide a lot in terms of useful guidance or precedent for us. I do know that Nunavut is considering the inclusion of some kind of a similar provision in its new human rights act.

I think that perhaps my trepidation about including this ground arises mostly from the fact that we would be (could not hear) years in the field. There is little for us to draw on in terms of interpretation of the meaning of the term, or the implications even of adding it as a prohibited ground. The definition contained in the proposed act is extremely wide, as it would have to be to encompass all that that term seems to imply. It will not be an easy provision to apply or to interpret. I note that it will be ground-breaking, and to some extent that makes me less than 100 percent enthusiastic about its inclusion.

Similarly the prohibition in section 7 against discriminating against an individual on the basis of his or her political association or family affiliation is, as far as I know, not standard in human rights legislation of other Canadian jurisdictions. Political belief is not the same kind of a disability that is usually associated with the kinds of disadvantage that the other prohibited grounds of discrimination hope to address. I am ambivalent, I suppose is the word that would best describe my feelings about including this ground of discrimination in section 7.

Section 33 of the proposed legislation deals with settlement and provides that where the parties to a dispute settle a matter the director shall cease proceedings under the Act. This causes me some concern because the nature of human rights legislation is not only or solely to compensate an individual who has been discriminated against. That is, of course, one of the desired outcomes, but not necessarily the primary focus. The primary focus of human rights legislation is to identify discriminatory behaviour and change it permanently for all those to follow -- not just for the individual who has filed the complaint.

In a case of systemic discrimination, which is the hardest type of discrimination to address, an individual settlement will do nothing to resolve the bigger problem. The current legislation allows a fair practices officer to continue with a complaint in the face of a settlement, unless the officer has approved the agreement. To require a human rights officer to cease any further proceedings where a settlement has been reached will effectively prevent systemic issues from being dealt with.

We would prefer to see a provision similar to the current section 7.2(4) of the Fair Practices Act, which states: "Where a complainant withdraws a complaint, a fair practices officer may continue the proceeding if, in the opinion of the fair practices officer, to proceed would not have an adverse impact on the complainant and would be in the best interest of the public."

There are also, to my mind, a few things missing from the Act. In most cases someone who is making a complaint under human rights legislation, be it here or anywhere else in Canada, has far fewer resources than does the respondent, who is usually an employer or business. We often see complainants trying to present their own cases, while respondents hire legal assistance to get the job done.

Particularly in light of the nature of human rights legislation, it is important that there is an even playing field for both sides in a dispute. The Act needs to provide for commission counsel to assist complainants in presenting their cases.

This need not be a full-time position. In fact, I would think that this could be met by a contract to a qualified individual to provide legal service on an ad hoc basis. But to allow full and proper consideration of complaints, many complainants require assistance. This to my mind is an important aspect of any legislation whose goal is to eliminate disadvantage.

The other thing that struck me in reading the Act is in section 13 which prohibits the publication or display of any notice, sign, symbol, emblem or other representation that expresses any form of discrimination. It is not clear from my reading of it, however, whether it is intended that this provision apply to the electronic medium. I would ask the committee to consider specifying that electronic publication is included in this prohibition as in this day and age the Internet is the most dangerous weapon for those who would publish hate.

What is bad? Although there is a lot that is good about the Act and I am very pleased with the direction it is taking, the one thing that is bad about it is something I have very strong feelings about -- and in fact I believe that the issue makes the legislation as a whole bad. The first thing I looked at when I looked at the Act was the structure proposed for dealing with and determining complaints. Having worked under the Fair Practices Act now for some three years, and having attended a number of gatherings of human rights officers from throughout the country, the first thing that struck me was the extreme complexity of the process being proposed.

It is to be noted that in many jurisdictions across the country they are trying to get away from this exact set-up. They are trying to get away from the heavily bureaucratized, complex and time consuming processes that are being proposed here. They are moving towards a more direct and less complex structure -- quite frankly a structure much more along the lines of what we currently now have under the Fair Practices Act.

Under the current structure a fair practices officer has the responsibility to receive complaints, investigate them, mediate them and adjudicate them. Since the appointment of three fair practices officers three or four years ago, the system has worked very well. It allows one officer to see the process through from beginning to end. As a matter of choice, the current fair practices officers have determined that the fair practices officer who investigates a complaint will not mediate it. Other than that, one fair practices officer will deal with it from intake to conclusion.

The current system works as follows. First of all a complaint is received in writing, a file is opened and assigned to a fair practices officer. Secondly the fair practices officer informs the parties that an investigation is being undertaken and invites initial submissions. Thirdly the fair practices officer determines whether the complainant has made out a prima facie case of discrimination under the Act. This is, frankly, a very low threshold test. However, if no such case is made out, the complaint is dismissed. So if there is no jurisdiction to deal with the matter, or if there is simply no evidence whatsoever that discrimination was the basis of the problem, then the complaint is dismissed at this point.

Fourthly our fair practices officers have made it a policy that all cases will be referred to mediation before a hearing unless the person investigating the case deems, for whatever reason, that it would be inappropriate to do so. Once it ahs been determined that a prima facie case has been made out, then the matter will be referred to mediation. Fifthly if mediation is unsuccessful the matter is returned to the investigating fair practices officer for a hearing, and that person -- the person who did the investigation -- then becomes the adjudicating officer at the hearing. Finally if either party is unhappy with the decision made by the fair practices officer he or she may appeal to the Supreme Court.

We have a six step process from beginning to end, and at most two individuals from the fair practices office will be involved in the process. With this process in place, it has been efficient, it has been effective and from beginning to end complaints are usually dealt with within six months of receipt of the original complaint.

The proposed structure builds in a number of additional steps to the process -- 13 steps to be exact. First of all the director receives a complaint and reviews and inquires into the complaint to the extent that the director determines is warranted. Secondly the director must then cause each person that is alleged to have contravened the act to be served with a copy of the complaint. Thirdly the director shall then, by mediation or other means, assist the parties in attempting to settle the complaint -- and this is whether or not that would be an appropriate thing to do in every circumstance, which I am not convinced that it is.

Fourthly the director may then send the matter to an investigator to investigate the matter. Fifthly the investigator must then prepare a written report an submit it to the director. Sixthly the director must then refer the matter to an adjudicator for a hearing. Seventh the director appoints an investigator. Eighth the investigator conducts an investigation and provides a report to the director.

Nine the director provides each of the parties with a copy of the report. Ten the director shall refer a complaint to an adjudication panel unless the matter is settled or dismissed because there is no jurisdiction. Eleven the chairperson of the adjudication panel must then designate a member of the panel to adjudicate the complaint. Twelve the person appointed must then hold a hearing and determination is made as to whether or not the actions complained of were discriminatory under the Act. Thirteen if either party is unhappy with the decision an appeal lies to the Supreme Court. Thirteen steps instead of six.

Not only are there 13 steps, the process will involve at a minimum four different employees of the human rights office rather than, at a maximum now, of two. If my father left me with any sage piece of advice in his life, it was "if it ain't broke don't fix it".

Before creating this megalith, I would suggest that we need to go back and look at what is not working with the present system, and how the proposed system is better. With respect, I cannot for the life of me think of any argument to make in favour of this new system in terms of how it will improve the complaint process for either complainants or respondents. It will inevitably lengthen the time from complaint to final adjudication from the current six months to a year or more, which is universally the experience in southern Canada.

The proposed legislation will make the system more difficult, less accessible and more expensive for both complainants and respondents. It will substantially increase the cost of administering the system. Where the office is now run by one part-time administrative assistant and three part-time fair practices officers, the proposed system contemplates a commission of between three and five people whose function is very unclear to my mind -- I cannot for the life of me figure out what the commission is to do -- a director and a deputy director, one or more investigators and a panel of at least three adjudicators.

I am assuming -- perhaps wrongly -- that it is intended that the commissioners, the director and the deputy director, and the investigators, will be full-time employees and that the adjudicators will be contracted on a part-time basis as needed. I also assume that the office will require at least one full-time administrative assistant. I count seven full-time employees, and at least three part-timers -- where we now have four part-timers doing the work effectively and efficiently. With respect, as a taxpayer, I consider this to be a waste of resources.

What do I see as an alternative? I see a full-time office administrator who receives complaints and takes care of day to day office administration, much like our very capable administrator does now on a part-time basis. I also see a full-time employee who will be responsible for public education and for reporting to the Legislative Assembly. I see three or four part-time human rights officers whoa re legally trained and who have mediation training who can work together, much like the current team, to investigate, mediate and adjudicate complaints that come in the door.

I cannot state strongly enough my concern about the complexity and bureaucracy that this Act will create.

I thank you for the opportunity to be address you and provide you with my comments and concerns. This is legislation that has been a long time in coming and which is so important to the ideals we hope to encourage in our society. I hope that my comments might assist in providing the perspective of someone who has intimate knowledge of our current Fair Practices Act and what has worked well with that Act and what is lacking. I hope that I have provided some insight from that perspective. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. I am going to ask committee, if that is alright, if they have any questions for you. We will start with Mr. Dent.

MR. DENT: Thank you, Mr. Chairman, just a couple of questions. I think that Ms. Keenan-Bengts has presented us with some issues that we need to think about. One of the biggest criticisms we have faced in our system with having the Fair Practices Act now is that we have not had a commission. That has been one of the biggest public criticisms that we have had to face since I have become aware of this issue. I am a little surprised that Ms. Keenan-Bengts seems to be recommending that we not proceed with a commission. That would make us the only jurisdiction in Canada that probably wouldn't have a commission as part of its human rights process. The commission as envisioned here -- in fact in the Act it says that they are not to be paid so they are definitely not full-time people. Their primary function is to educate the public about the Human Rights Act and the people's rights and responsibilities, and report to the Legislative Assembly.

I am just a little bit surprised that Ms. Keenan-Bengts does not see the need for the commission. I wonder if we could maybe just explore that area a bit. I know that I have certainly heard from constituents and stakeholders in the field consistently for the past 10 years that if it is one thing that we are lacking it is a commission. People seem to feel that without that commission there is something that is missing. Has Ms. Keenan-Bengts not also heard that same concern?

CHAIRMAN (Mr. Bell): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: No, I think you can still have something called a commission. The question is what is the role of the commission, and just because everyone else has one doesn't mean it is a good thing. As I say, I think that around the table at CASHRA meetings that I have attended in the last three or four years discussion has been about changing the system to make it more simple, to get out of the commission-tribunal-appeal process. I would have to know why people consider it something that we need. I do not think it is something that we need because I think what the function of the commission is to my mind is, what do we need? We need somebody to do an educational function. We need somebody to assist complainants to present their cases. If that is what you want to call a commission, then call it a commission if you will.

My problem in reading the Act is that I cannot see a function for the commission as it is set out in the current Act. I do not know what the thinking is behind it. I didn't read into it that they were not to be paid. That comes as news to me. It does not read that way to me. It reads to me like there is going to be a commission that has some sort of function that is not really well defined, except to do some education. Absolutely education is necessary, but I do not think you need to call it a commission simply because everyone else has a commission.

I think my problem is that the system that is contemplated here is just far too complex. It is going to chase people away rather than draw people in.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. One of the other expressions of concern I have heard about our current system is just as Ms. Keenan-Bengts outlined in the current process, the investigator can become the judge in our current process. That seems to fly in the face of the principles of natural justice. There has been a concern, I think, expressed about that, and that is one of the reasons this Act has changed the process so that we don't wind up with that same sort of situation, so we have adjudicators who are not investigators.

The intent, by the way, I think is for most of the operation to be by part-time people as well. It is not something where we are hoping to create a massive bureaucracy. There is definitely more bureaucracy than we have currently, but you cannot separate those two functions without creating that situation. That is the reason for this response, and again we are responding to public pressure to do that. I know that Ms. Keenan-Bengts, having a legal background, must have heard this sort of concern too. Again, I would like to explore why she is recommending that we not follow through on this sort of process, separating the two functions of investigator and adjudicator.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Perhaps I could start by answering that by saying that I cannot recall any incident in the last three or four years that I have been doing this where that has been raised as a concern. The investigations that we do are very surface investigations. Essentially we ask the parties to each give their sides of the story in writing. Basically if the complainant's story were true discrimination would lie under the Act. We do not go much further than that. In other words, all the complainant has to do Is say, "He fired me because I'm black." And if there is any basis upon which that might be possible, we will send it to the next step. In other words, it is a very cursory investigation. We do not delve into it. We don't interview people extensively. It is almost like, if you were to compare it to the court system, like a Chamber's application before a trial. You look at the very surface issues, make a decision as to whether or not there is jurisdiction and if we have jurisdiction is it something that is more than just a – so many of our complaints are, "I got fired and that was unfair and I want to file a complaint." But there is nothing they can point to that says "I was fired because I'm black" or "I as fired because I am a woman" or "I was fired because I was pregnant", and unless they can show something that suggests that maybe they were fired on one of those grounds it is dismissed.

If they can say "I was fired because I was pregnant. I was doing fine. I was working there for three years. I got pregnant. I had to take three weeks off because of my pregnancy. I came back and I was fired." We would send that further without even looking too much at what the respondent says. The investigation is very cursory. I have never heard a complaint to us about the fact that we both investigate and adjudicate because the initial investigation is very cursory, we don't delve into it.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. Okay so right now that system seems to be working, but Ms. Keenan-Bengts has also recommended that need to add into our Act a process whereby a complainant can have access to counsel. Again wouldn't she think that if we were going to add that in, the system is going to get even closer to quasi-judicial in which case you are going to see many more instances where the concern about the principles of natural justice are going to be raised then?

CHAIRMAN (Mr. Bell): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I suggest the need for counsel or somebody to present the cases of complainants because complainants are inevitably people who don't have the resources, the educational background or the knowledge of the rules of natural justice to be able to effectively present their cases. I have seen a number of cases that have come before me where, in the back of my mind, I think there is something going on here, but the complainant has been unable to present the case in such a way to convince me, while the respondent who has legal counsel has done a darn fine job of digging underneath, getting around, changing direction and that sort of thing because inevitably respondents do have counsel and inevitably complainants do not. It is a flaw in the system right now.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Mr. Dent.

MR. DENT: Perhaps one final question just on this before someone else has a chance, what Ms. Keenan-Bengts just said there would tend to then lead me to say that what we are proposing is better. In this Act, as I understand it now, the investigators actually do more than a cursory investigation, so if anything they are acting on behalf of the complainant because they are expected to delve into an issue far more deeply than what might be currently the case. If Ms. Keenan-Bengts is now saying that she has been concerned that some of the complainants maybe have not been able to make their case because they didn't have that sort of assistance, then by providing that through the director's office in the new act are we not, in fact, making better what she has seen as a shortcoming in the current system?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I do not think so because first of all the investigator prepares a report which theoretically will include not only the nature of the complaint but the steps taken. In other words, the adjudicator, once it gets to the adjudicator, will still have all of the same kind of information that a fair practices office now has through its own investigation. It is not like the adjudicator will be coming without any sort of preconceived ideas about the case. He will have the report of the investigator.

Secondly, although the investigator has to prepare this great long report and do this in-depth investigation, the complainant is still left to his or her own devices in terms of presenting his or her case to the adjudicator. It does not put the complainant in any better situation because he or she is still before this adjudicator having to present his or her case because once it gets to an adjudicator, as I understand it, it still the same as our hearing. Each side provides their evidence under oath, in theory, and has to prove their case on a balance of probabilities or whatever the standard is. The complainant still has to do that. The complainant is still on his or her own doing that. They may have a report that makes it more concise for them, but they are still in a position of having to prove their case, call the witnesses and present the evidence necessary to prove that the facts set out in the investigation are there. They still have to prove on a balance of probabilities that this incident occurred and it occurred because of discrimination.

I do not think that creating a more in-depth investigation is going to change that. It is going to lengthen the time it takes to get from A to B, but I do not think it is going to change in the end the complainant's ability to present his or her case -- not significantly.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. I will go to Mr. Braden next.

MR. BRADEN: Thank you, Mr. Chairman, and thank you, Ms. Keenan-Bengts, for bringing these views to the hearing. There are a couple of areas that are quite substantive in your views and your positions. As you were outlining some of your thoughts I was struck with how they contrast with what is actually in the bill now. It is the committee's understanding that we were actually looking at the third go-around of the bill as two drafts were already circulated fairly widely to the public.

I wanted to ask, Mr. Chairman, in drafting the bill did the department or did the government include you or your colleagues at any stage in the draft that we see so far?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: We met with Sue Heron-Herbert, and I am not sure what her role was, who created a report to whoever was drafting the legislation. That was the only consultation that we had.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Mr. Braden.

MR. BRADEN: Okay, I am going to argue or debate that, but I just wanted to see at what point you may have been included in the creation of the document. I am especially interested in your views on the complexity that this process is going to introduce. If there is anything that we should be trying to seek in government it is how do we take things off the table and how do we decrease the burden on the public and our own people and on our own system to have to live up to what seemed to be, as you described, a very onerous process here. You are suggesting that we now have perhaps a process that is going to involve up to 13 steps given that there were six in the current system here. That kind of an opinion tells me that possibly we are going in the wrong direction with the way this Act is outlined.

To pose a question on that theme, Mr. Chairman, I wanted to find out if Ms. Keenan-Bengts thinks that with the much broader mandate this Act outlines – the duty to educate and there are much broader definitions now of prohibited grounds so potentially now we have a bigger work load here – does that in itself necessitate some more complexity in order to get the job done well? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: There will definitely be more work. By expanding the grounds you are going to have more complaints. The publicity surrounding the passing of the Human Rights Act, when it is passed, will in and of itself generate complaints. If social condition remains in the Act as a prohibited ground, I suspect that will create a lot of work for those who are adjudicating the Act simply because it is new and it hasn't been done elsewhere, people will experiment with it. Until such time as it is used enough so that there is a better understanding of what it really means, I suspect that a lot of complaints will be lumped into that ground of discrimination. Yes there will be more work.

Does more work require more complexity? I do not necessarily think so. Absolutely there has to be a full-time person doing education. Right now the way things are set up, even if we wanted to, we don't have the mandate to do education and we don't have the resources. It is a huge part of the Act, and of course the more you educate people the more they know that they have this resource and there will again be a peak or a jag in the number of complaints. Southern jurisdictions have noted that. Any time there is an amendment to their act or some sort of publicity, they see increased numbers of complaints. The more they educate the more complaints they get, absolutely.

Does that mean that you need to have that in-depth thorough investigation to begin with – does it mean that you have to go through all those 13 steps to get to the same spot? I do not think so. Because there is more work – and as I say I think southern jurisdictions are coming to the conclusion that their systems are too complex -- in some cases it is taking three years to get from beginning to end. In many cases, complainants are just abandoning the complaints because it is taking too long to get anything done. Many jurisdictions in southern Canada are trying to find a way to make things easier and are going from the commission with its extensive investigation to a director who decides whether it goes further than that or not, and into a more direct route to the people who actually adjudicate the matter, so they can skip the investigation if they want and send it directly to an adjudicator.

I am not suggesting that our system is good. It is not perfect. Things need to be done to fix it, but what I am trying to say I suppose is that we do not need to follow the southern jurisdictions just because that is the way they do it. It seems to me that it is far too complex a system for this small jurisdiction where we can deal with things more expeditiously.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden, follow-up.

MR. BRADEN: Thank you, Mr. Chairman, if I could explore one other aspect of Ms. Keenan-Bengts' comments. Early in her paper she discussed on page 5 the notion of discrimination based on political belief or political association, or family affiliation and suggested that it is not a standard condition or ground that is in other jurisdictions in Canada. She suggested that political belief is not the same kind of "disability" that is usually associated with the kinds of disadvantage that other grounds of prohibited discrimination hope to address. Sometimes political affiliation is a disability, but not in the realm of a human rights situation. I would just like to get a better explanation of this. I don't know if I follow the line that she has presented here. Maybe by rephrasing it she will be able to help me. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: It is difficult for me to articulate because it is a matter of degree, I suppose. Somebody who is a quadriplegic or is a woman or is black are discriminated against because of who and what they are, because of what the Good Lord gave them. Political belief is a matter of choice, and I suppose that to my mind is what makes it different. I do understand and I do appreciate -- perhaps internationally more than within Canada -- that often people are persecuted because of their political beliefs. For that reason it is an appropriate thing to put in human rights legislation. That is on the one hand.

On the other hand, it is not of the same kind of disability or disadvantage that we have because of how we were born or events that have happened to us beyond our control. That is the sort of thing that causes me just a little bit of -- not concern but I just raise it as an issue. Is this really the same sort of thing as having a broken back? Is it the same quality? I don't know if that makes it any clearer.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts, and I think this certainly does require some further discussion on this point. I think the other prohibited grounds are typically immutable characteristics and this doesn't seem to fit the bill. Any other questions from committee members? Mr. Dent.

MR. DENT: I just wanted to follow up. Ms. Keenan-Bengts has raised the issue of social condition as a prohibited ground. I think members of the committee have been somewhat concerned about how this is liable to go. I know that the department and the Minister are also considering amendments that would tighten up the definition of "social condition". I think that Ms. Keenan-Bengts would certainly understand what the goal is here, and I would like to ask her if she has put any thought into how we can achieve that goal without calling it social condition, or if she has any way of tightening up the definition or suggestions for us on how we could tighten the definition of social condition so that it doesn't become too broad so as to become unworkable really, and yet to achieve the goal which is to make sure that nobody is disadvantaged because of their membership in a disadvantaged group?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Any thoughts on that, Ms. Keenan-Bengts?

MS. KEENAN-BENGTS: If I had that answer, I would be able to make my fortune because this is exactly the debate that is going on throughout the country. In Quebec, as I understand it, it has not been misused and they have had very few cases decided on their social condition provisions. But again I am not sure that we can take Quebec as a precedent because their system is entirely different. Their whole approach to human rights is different than in the rest of Canada.

I do appreciate and as I said in my submission intellectually I think it is something we need to address, but how you do that and the wider implications of doing that d cause concern. How far does it go? When I first heard of social condition as being included in human rights legislation I thought that I can complain that my human rights are being trod upon because I cannot get legal aid because of my social condition because I am well enough off to pay for my own legal fees. I think the definition that has been used would prevent that because it refers to a disadvantage. But you are right, and I do not know that there is an answer. I don't know that there is a better way to do it. It is a difficult concept. It is something that we need to try to include and try to address. I don't know how to do it.

CHAIRMAN (Mr. Bell): Thank you. To your knowledge, Ms. Keenan-Bengts, does Quebec refer to source of income as opposed to social condition?

MS. KEENAN-BENGTS: I would have to look that up. I believe that it is social condition.

CHAIRMAN (Mr. Bell): Okay, I am being told that it is not defined. Thank you. Any further questions? I have a couple of questions. We are running out of time here, but just quickly. I wanted to ask you, Ms. Keenan-Bengts, you made the comment that the system has worked very well, but did also suggest there are some things we need to do to fix it. I am interested in the current process of receiving the complaints, investigating them, mediating them, adjudicating them -

- if you are getting these things done in six months it is very efficient. Mr. Dent raised the concern, that I have heard as well, about the perception that there is possibly not enough objectivity in the system when one person is handling all of these facets. Why did you, as a matter of choice as you suggest here, decide that the person receiving and investigating a complaint wouldn't be the one mediating it?

MS. KEENAN-BENGTS: Because in order for people to be open and honest in mediation they have to trust that what they say isn't going to be used against them at some point. Although the current Act provides that we could do all of those functions I don't think that you are going to get any successful mediation if people know that what they say in this is already in the head of the person who is going to be hearing the matter in the end. That is why we have chosen to do it this way. If I am investigating a matter I will not mediate it. I will send it to one of the other fair practices officers and they will mediate it. If it is unsuccessful it comes back to me. The reason is that we want people to be open and honest, and feel that they can be open and honest in the mediation.

CHAIRMAN (Mr. Bell): Okay. But as you say, this is not a matter of legislation -- certainly not even a matter of policy. The next crop of fair practices officers that come along could just decide that as a matter of efficiency we are going to do the whole thing with one person because after all that is the person who first received the complaint, is familiar with it, has a better understanding of it from start to finish and we can save some more time by lumping in mediation. That could happen under our system?

MS. KEENAN-BENGTS: Absolutely it could happen and that is something that -- our system is not perfect. I am not suggesting that it is, and it could use a lot more rules and regulations. We have created a system essentially because our current Act really doesn't provide us much guidance at all. Yes you are absolutely right.

CHAIRMAN (Mr. Bell): Okay. I also wanted to ask you about your comments that there has to be some provision for commission counsel to assist complainants in presenting their cases. I am not sure if this is typical and typically would be worked in in other human rights acts in other jurisdictions. One thing that we have talked about is the need to have something looked at for our legal aid legislation and system because after all our legal aid system has not contemplated this, we have not had a human rights act. Would this be something that would normally be in human rights acts, or would this be something that would be outside that legislation and typically be found in the realm of legal aid in other jurisdictions? Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I believe that in other jurisdictions somebody from the commission presents the case to the tribunal so that the complainants are not left to do it for themselves. Can legal aid step p to the plate if they had the money -- yes because for the most part human rights complainants will be those who would qualify for legal aid financially. Not always, but for the most part they are. It is something that I have actually discussed with the executive director of legal aid in terms of whether or not they would be prepared to provide legal aid to somebody who is presenting a fair practices case. In fact, I think they did so in at least one case. But it would be -- like everyone else lawyers tend to specialize and it would be nice to have somebody who has an intimate knowledge of the Act who is able to present cases on behalf of complainants.

CHAIRMAN (Mr. Bell): Okay, fair enough. One last question before we let you go. I am sure if I had time to sit down and go through this more comprehensively right here I would have many more questions, and we may in the future. I wanted to ask you -- you make the point that the primary intent of the legislation isn't to compensate the individual who has been found to be discriminated against. It is one of the desired outcomes but not necessarily the primary focus, the objective here is to remove the systemic barriers. I wanted to ask you about the incentive for a settlement and if a human rights officer still has the ability to continue to follow the complaint and to continue the process, does that remove some of the incentive in your opinion for a settlement on the part of the party complained of? If they know that they could settle and they might agree to settle, but this thing is going to drag on and continue to be investigated at any rate and they are going to continue to get raked through the muck, if that is a way you might refer to it, and therefore they are not going to bother settling. Is there the danger that that might be the case? Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: I don't think so. We have been doing this, as I say, we have had probably half of the complaints that come to us are settled. We have not chosen, at this point, although we have the ability to do so, to continue with the complaint once its been settled.

I think an adjudicator, a human rights officer, a fair practices officer, whatever they are going to be called, is going to pick and chose those very carefully. It will be most likely only those where systemic discrimination seems to be where the problem is.

Much discrimination is a one on one thing. It is not systemic, it is not something -- systemic discrimination is something that is hard to get your fingers on. Most cases really are not that kind of case, but there are going to be those cases. For example, the pay equity case. That is a systemic problem. In order to get at the bottom of those ones, particularly where the complainant is not someone with a lot of resources you have to give that opportunity to the fair practices officers or whatever you want to call it to be able to pursue it and get to the bottom of it. I do not think it is going to prevent people from settling at all.

CHAIRMAN (Mr. Bell): Thank you. Just before we adjourn, I do want to ask Ms. Peterson and Ms. Fannie if they have any questions for you. Do either of you have questions? Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. On the issue of structure and the complexity of the process you see as contemplated by this legislation, you suggested that essentially with some augmentation the fair practices regime as it is now is continued with some additional resources and educative functions.

Can you advise the committee whether you are aware of, in any other jurisdictions, where the functions of investigation and adjudication have now been combined?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: Only to the extent that, and I cannot remember what jurisdiction it is, maybe Manitoba? I cannot remember what jurisdiction it is, but at least one jurisdiction has gone this way and others consider going this way and that is to cut out that investigation altogether, which, when it comes right down to it I suppose, is what we do right now. Our investigation such as it is, is very cursory, very cursory indeed.

I also know that a study was done several years ago at the federal level in which it was suggested that there be direct access to the tribunal, avoiding all the complexities of the commission but I do not know where that has gone.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Would you agree that a fair amount of the jurisprudence in the area of administrative law in fact requires separation of those functions?

CHAIRMAN (Mr. Bell): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: You are right, but as I said, I am not sure you can even call what we do an investigation. If there are -- a prima facia case is so easy to make out. If there is a prima facia case, if what you are telling me is true it would be discrimination, then it is going to a hearing and it really does simply eliminate -- the way we do things right now, for all intents and purposes, we eliminate that investigative role. There is no real investigation.

There is a review of the complaint if we have jurisdiction. If what you say is true it would be discrimination, and we send it to a hearing. It is as simple as that. So yes, you are right, administrative law does suggest that those two functions be separated.

I suppose in the end what I am suggesting is that I am not sure if that investigative step is all that necessary.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Ms. Peterson.

MS. PETERSON: It has been suggested that if you have a reasonable capacity to investigate that less complaints may end up in the costly and time consuming hearing process. So that through investigation you are able to narrow the amount of complaints that ultimately end up in adjudication. Do you agree that is one of the roles of investigation?

CHAIRMAN (Mr. Bell): Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: One of the problems that the commissions in southern Canada, or those who are human rights advocates I should say, in southern Canada, what I have heard them say at these meetings that I go to is that too many complaints are being set aside at that level and investigators are making decisions as opposed to adjudicators.

That so few of these matters actually get to a hearing in southern Canada that it is almost shameful. Most of our cases do not get to a hearing in any event. Most of our cases are mediated or otherwise settled in any event. I think if you are going to emphasis something maybe that is where the emphasis should be. I would like to avoid the situation where people who are hired to investigate something are actually making the decisions as to whether or not it goes ahead.

CHAIRMAN (Mr. Bell): Thank you, Ms. Keenan-Bengts. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Just on one final point really dealing with two concerns that you raised, one in terms of resources available for complainants and your general concern about the complexity of the process, are your concerns eased at all by the fact that the commission itself can initiate and carry a complaint under Bill 1 in terms of assisting complainants; and are your concerns about complexity eased by the fact that not all the steps which you have outlined are mandatory in the sense that the director can refer a matter directly to adjudication or take a number of different paths to the same end?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Keenan-Bengts.

MS. KEENAN-BENGTS: The answer to both questions is yes. In other jurisdictions I am aware that recent amendments, fairly recent amendments in some cases, have allowed the commission to take a case and run with it. I also am aware that commissions are using those powers very judiciously and are taking the ball and running with it only in rare circumstances.

So yes, it gives me some feeling that maybe those really, really bad cases will still go ahead, on the one hand. On the other hand, I do not think it meets the concerns that I have on a larger scale. I do not know if that completely answers your question.

CHAIRMAN (Mr. Bell): Thank you. We are going to adjourn here, but I wanted to ask you, you spoke at the beginning quite critically, I think, of the role of the commission or could not find a role for the commission. We have talked about it here a little bit and we have talked about initially public education. Now we are starting to see there might be some advocacy role, possibly the commission has the ability to take cases and carry them. Is this enough of a role for a commission to make it warranted or do you still believe this really is not a role and we may therefore not even need this body?

MS. KEENAN-BENGTS: I have said before and I will say again that the most important change that this legislation is making is that there is an educative function. If that is the role of the commission then that is the role of the commission. That being said, I do not think you need a commission of four or five people to do that. What you need is somebody dedicated to that, one person even would do it.

The other roles of the commission, it is hard to say until you see it working. I do not know.

CHAIRMAN (Mr. Bell): Thank you. Fair enough. I want to thank you on behalf of this committee for this very substantive and comprehensive submission that you have given us. You have given us a lot to think about and talk about. Clearly you have a great deal of experience in this area so we appreciate you coming before us here today.

MS. KEENAN-BENGTS: I thank you for the opportunity.

CHAIRMAN (Mr. Bell): Certainly. So we will adjourn now and reconvene at 11:00. Thank you.

-- Break

CHAIRMAN (Mr. Bell): Okay, we will come back to order with the public review of Bill 1, the Human Rights Act. Again, the committee members are Mrs. Groenewegen, Mr. Dent, Mr. Lafferty will be joining us shortly. I believe our next presenter is Ms. Traynor from the Yellowknife Women's Centre. Did you want to come to the witness table? Okay, if you could both just introduce yourselves for the record when you are prepared to start and we will begin.

MS. TRAYNOR: Thank you. My name is Fiona Traynor and I am with the Yellowknife Women's Centre as a support person and advocate.

MS. DENNISON: My name is Sophie Dennison, I work at the women's centre as a support person as well.

CHAIRMAN (Mr. Bell): Welcome.

MS. TRAYNOR: Both of us will be presenting, we do not have very many submissions, but we are going to take turns presenting the submissions. I would just like to start off by saying that the introduction of the Human Rights legislation is a very progressive step for the NWT and the Women's Centre would like to congratulate everyone who has worked on and had the input in the development and submission of Bill 1.

Also, the Federation of Labour held a Human Rights Forum at the end of August and just how useful that exercise was. It was good to see Bill Braden there one day and MLA Sandy Lee was there on the Saturday and it was really heartening to see MLAs there who were interested in hearing what the community groups had to say.

I will just start with Section 5, prohibited grounds of discrimination and I am assuming you all have what we have written there, so I will just read what we are submitting.

The current Fair Practices Act applies to people who have been pardoned for a past criminal offence. These individuals are protected from discrimination and can use the mechanisms of the act to investigate possible discrimination regarding employment.

Under the current legislation employers are allowed to turn down for employment persons who do not have a pardon, or have pending criminal charges. This leaves persons with criminal records and/or charges vulnerable to employment discrimination. In effect, persons with criminal records are being punished again for crimes for which they have served sentences. And, persons facing charges are being judged under a presumption of guilt before they are tried when they are turned down for employment.

Recommendation

We are recommending that a prohibited ground of a criminal conviction or charge be included in the proposed Human Rights Act, providing that the conviction and/or charge is not relevant to the job.

Section 13 - Publication

The proposed Human Rights Act prohibits the use of notices, signs, emblems and other representations to express discrimination, or incites or is calculated to incite others to discriminate against any individual or class of individuals. This does not include the use of signs, et cetera, to incite hatred.

Most provincial human rights codes, except for Saskatchewan, do not prohibit the publication of hate speech. The Saskatchewan Human Rights Code provides:

> No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device, or in any printed matter or publication or by means of any other medium that the person owns, controls, distributes or sells, any representation, including any

> notice, sign, symbol, emblem, article statement or other representations: ...
>
> (b) That exposes or tends to expose to hatred, ridicules, belittles or otherwise affronts the dignity of any person or class of persons on the basis of a prohibited ground.

Recommendation

The proposed Human Rights Act law needs to be expanded to include the publication of hate speech. We strongly urge that the proposed Human Rights Act go further and include a provision to read:

the use of signs, et cetera, that expresses or implies discrimination or hate, or incites or is calculated to incite others to discriminate or hate, any individual or class of individuals.

And to include a provision similar to (b) in the Saskatchewan Human Rights Code. Also, this section should be expanded to include all electronic/broadcasting media, including the Internet as well as signs, et cetera. Sophie, did you want to read the section on harassment?

MS. DENNISON: Okay.

Section 14 - Harassment

We recommend that this section be expanded to include offensive, harassment situations outside of the workplace. We recommend that this section include personal harassment in matters relating to physical, emotional, financial abuse of authority or any unwanted behaviour that is offensive and occurs at anytime, anywhere.

MS. TRAYNOR: Then we will move onto section 16.

Human Rights Commission

Section 16 (2), (3), (4), (5)

Considering that this act is a new beginning, of sorts, for the protection of human rights in the Northwest Territories, it is important that the Human Rights Commission is not created on an outdated, bureaucratic and patriarchal model.

We strongly recommend that commission members not be appointed by the commissioner. We are calling on the Government of the Northwest Territories to establish an independent, arm's length Human Rights Commission that would be representative of the community at large and has the funding to promote human rights education throughout the Territory.

We are recommending that the commission be comprised of members who are vetted through an application process (submitted to a hiring committee, not the Legislative Assembly). We are recommending that the commission should be representative of all the communities, and efforts should be made to encourage people from the communities to apply to sit on the commission. We are recommending that the commission be comprised of 50 percent women.

The Human Rights Act is supposed to protect all people and therefore should be representative of all people.

Section 18(1)(2)(a) Chairperson, Deputy Chairperson

We recommend that the commission members should appoint a chairperson in an effort to create a strong, independent Human Rights Commission. This would therefore change (2)(a) to read: "If the commission cannot agree – this is as far as the Speaker on appointing a chairperson – on who should sit as chairperson."

Section 20 Powers, Duties and Functions

We recommend that the commission be given the necessary funds to effectively carry out its powers, duties and functions. All too often people in the Northwest Territories come face to face with legislation and government review panels with little or no knowledge of their rights. The Yellowknife Women's Centre has been approached by many clients who attend child protection hearings, rental hearings, income support hearings, et cetera, on their own. Most times these people do not know what their rights are under existing legislation; they do not know how to access the legislation that governs their lives a lot of times.

The Human Rights Commission should strive to and be funded to operate and promote the act in an open and accessible manner so that the citizens of the Northwest Territories know about, understand and feel comfortable using the new legislation.

We recommend that the annual report outlined in Section 21 be presented in a public forum in regional centres and not just to the Speaker who then presents it to the Legislative Assembly. The report should be produced in plain language and in the aboriginal languages.

We also recommend that funding and training be provided to non-governmental organizations to become functioning members of the commission. The commission will provide training or funding for training on the Northwest Territories Human Rights Act for advocates who will assist complainants to the commission.

I was reading Elaine Keenan-Bengts submissions from this morning and we would support her submission that a commission council be appointed as well. We think it is important as well that community organizations be trained in the functioning of the act so that it is more accessible, so that people do not have too

– we are a drop-in centre at the Women's Centre. The Women's Centre, YWCA, Status of Women Council, Council for Disabilities, any number of organizations, so that people can go into these NGOs and they can find out what their rights are, they can get information and they can also go through the process with a representative from one of these organizations who is trained fully.

A lot of times working in an NGO we are often kind of learning as we go. Often times I think that actually puts the clients at a disadvantage because we are trying to educate ourselves and we are trying to educate the client.

Those are our submissions. I do not know if anyone has any questions.

CHAIRMAN (Mr. Bell): Thank you both for the presentation and for the submission. I will ask committee members if they do have questions for you. I just wanted to ask one point of clarification before we get into questions. I think I might have missed your point here, maybe you could clarify it for me.

When you are referring to section 18(1)(2) chairperson, deputy chairperson, you have already said that you do not think it is appropriate for the Legislative Assembly to be appointing or conferring appointments in any event, but despite that I think that you said that if the commission members cannot agree on who should be chair and deputy chair it would be up to the Speaker to decide?

MS. TRAYNOR: Right.

CHAIRMAN (Mr. Bell): Okay.

MS. TRAYNOR: That just changes it somewhat under section 18(2)(a) because if I can just look here...

CHAIRMAN (Mr. Bell): As opposed to say the striking committee that is doing the appointing, you don't think that would be, if you are going with that mechanism, the striking committee wouldn't be who would assign who would be chair or deputy chair in the disagreement, it would be the Speaker?

MS. TRAYNOR: That is right, that is what I am submitting, yes.

CHAIRMAN (Mr. Bell): Thank you for that. I go to Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I would like to talk a bit about the selection of commission members. I know that members of this committee have certainly heard from various sources that there is a concern about the involvement of the Legislative Assembly in the appointments process. If we were to have a hiring committee, who would appoint them? I mean, it really does come down to those of us sitting around the table down there, at least all the members of the public have the opportunity to express their opinion about whether or not we should be sitting there as Members of the Assembly. It is hard to think of another route that gets together and has the overall view of the Northwest Territories that could work to oversee the process.

I know in Inuvik one person who presented to us suggested that perhaps the Assembly could appoint a committee that was made up of Members of the Legislative Assembly and some outside members and they would then submit their recommendations back to the Assembly.

I would like to ask Ms. Traynor if that sort of approach might meet the concern that Members have that it be only the Assembly. We are having trouble wrestling with who would actually do the final appointing if it is not something like the Legislative Assembly? It would be difficult to delegate that responsibility because then again you still run into that concern about representation and representativeness of that group if the final appointments are not done by a broadly elected group of people.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Traynor.

MS. TRAYNOR: I guess what I would say to that is I understand that the submission I make actually creates another level, perhaps, of bureaucracy with the hiring committee. I think a hiring committee -- that is what we will call it for now -- would be, could be comprised of representatives of the Legislative Assembly. I think that the submission from Inuvik makes sense, that you have other people, representatives from different community organizations on that to balance it out.

Because I work in a front-line situation with all sorts of people coming in and out. Not taking away from the responsibilities that you have as MLAs, but you are not working in the same kind of capacity, I do not think, as a person working on the front line and there are many of us in the community doing that.

I think that having the input and having the knowledge and the background of the people other just MLAs, I think on a selection committee, a hiring committee, I think that that makes it more even. It makes it more balanced. It gives the public - I am not saying the public doesn't talk to you, but it gives the public who maybe talk to me who do not talk to you a chance to have their voices heard and to just have more of an input in general on the people who are going to be sitting on this commission.

I think it is important that it is not just left up to the Legislative Assembly to do that.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: I just want to be clear. As long as we can find some method to involve, soliciting interest from people across the Territories in sitting as members of the commission, if we could in the initial round go through the selection process and making recommendations involving people outside of the

Assembly, would Ms. Traynor agree then that it would be acceptable that the final appointments are made by the Legislative Assembly so that they have the force of the broadest elected group as possible? That is where they get their mandate from. Would that achieve the goal, do you think?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Traynor.

MS. TRAYNOR: I do not want to commit to that right now, first off. I do not know if what you have proposed would satisfy the desire to have a more pluralistic hiring committee. I do not know if it would. Then we get into who are you listening to? Are you listening to me or are you listening to the person next to me? It is always going to come down to that. There is never going to be a perfect solution to any of this, I understand that.

I guess the short answer would be I am not going to commit to that because I would have to think about that a little bit more and I would have to bring it back to the board.

CHAIRMAN (Mr. Bell): Thank you, Ms. Traynor. Any other questions? Mr. Dent.

MR. DENT: This one will be for our law clerk. I was a little surprised to see in our presentation that Saskatchewan has tried to pass legislation that purports to rule the electronic media. I understood that to be the exclusive purview of the federal government. I did not think anything that a province or territory could do would impact on what broadcasting operations might do.

I would just like to ask if we could actually do something that would pertain to television or radio, and also then what are our options when it comes to the Internet as well? I know that the previous presenter also mentioned trying to do something to regulate hate speech on the Internet. I am not sure if we would have jurisdiction.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I am beginning to rely on Mr. Dent for coming up with the most difficult questions on different kinds of jurisdictions. As you know, the broadcast industry generally is federally regulated. Property and civil rights are provincially or territorially regulated. As between those two mixes there is an interesting sort of meshing of them in that aspects of broadcasting can, at times, be regulated provincially or territorially.

In terms of regulating the Internet, quite apart from the very practical considerations of how one goes about enforcing any regulatory regime with respect to the Internet, which to date I am not aware has been found, I think there are some jurisdictional issues with respect to the Internet in particular.

Whether that flows down to, for example, territorially operated service providers, for example, is a more difficult question. Whether you are in a position to regulate those service providers as to content is quite possible.

I think there may be some parallels between sort of rating of other kinds of materials that might be of assistance on this. Perhaps research and myself can look at the kind of law that surrounds censorship issues or the attempt to regulate industries that can be federal in nature.

I am sorry it is not a very clear answer but it is a difficult question.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Dent.

MR. DENT: Thank you. I think it would be useful for our committee to ask the law clerk and research to have a look at that just so we know. We have heard from two presenters now that we should look at the Internet and we should try to find out if we have any jurisdiction and if so, what that jurisdiction might be so we can at least be prepared to address the concerns that have been raised.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. I would also be curious to know why other jurisdictions have not looked at regulating the publication of hate speech. Is it something that has been attempted, something that has been discussed or something that has been ignored? Maybe that is something we can do a little bit of a look into.

Any further questions from members? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman and thank you to the Women's Centre for taking the time to prepare and send their advocates to our committee. I am interested in asking, from your experiences as front-line workers and advocates, you probably have more experience with victims of abuse or criminal acts of some kind than most in the Northwest Territories. I want to sort of get your views on a process if you will. We have a Fair Practices Act in place now.

What kind of experience do you have in terms of people, perhaps some of your clients, your people, accessing that system? Or trying to access it? How easy or difficult is it for people to get results from our current Fair Practices Act? I am wondering if you can compare it to the process that is outlined in here. Do you see improvements or difficulties with access to this new bill? Can you give us a description of your experience in that area? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Traynor.

MS. TRAYNOR: I have only been involved in one case that involved the Fair Practices Act and that was just recently. Obviously I cannot talk about it in any detail, but as it stands now in my opinion, from what I have seen, it has actually been a very good process what has happened so far for this particular client who I am thinking of.

The fair practices officer has been very helpful in explaining the process, in helping the person through the process and of course the process can be very complicated. The person who I am thinking of English is not the first language. What I have seen is a very helpful fair practices officer who I believe has gone out of his way to explain the implications of going further or not going further with her action.

Because I do not have a lot of experience with the Fair Practices Act as it stands now I do not know if I would be qualified, Mr. Braden, to compare it to what I see here. All I can say is from what I have seen with my limited experience with the act as it stands now it has been fair.

CHAIRMAN (Mr. Bell): Thank you, Ms. Traynor. Further, Mr. Braden.

MR. BRADEN: Yes, thank you, Mr. Chairman. I appreciate the answer. One of the things we are looking for here, we create a new law but just how accessible is it? Is it really going to make a difference for people? I want to explore this and probably will with some other presenters.

If we get away from the process and the wherewithal of whatever system of law we have, again from your front line experience what would be the most common or the most frequent kind of human rights violations that you see in your work with families? Thank you.

CHAIRMAN (Mr. Bell): Ms. Traynor.

MS. TRAYNOR: I guess it depends on what you would classify as a human rights violation. In my opinion, I see and I will go back to the most pressing issue that I am involved in in my work and that has to do with child protection concerns. I feel that there are a range of human rights violations. The way that it is handled, the way that the process is carried out as it stands now.

CHAIRMAN (Mr. Bell): Ms. Dennison.

MS. DENNISON: I would have to say that is right. I think we would see most of it with Health and Social Services and child protection. In terms of privacy - I am not even sure of how to phrase it but there are several violations there. I do not have the words for it right now.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden.

MR. BRADEN: Thank you. I guess in that area, would these kind of violations or problems that come up, are they systemic in nature? Are there problems created for people by the system, or the bureaucracy? Or, are these problems or hurt that is inflicted by other people, I am thinking other family members, other people in the community. Who is the cause of the most common problems? Is it the system itself or is it someone else in a client's life?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Traynor.

MS. TRAYNOR: Well, I would say that there is always a few sides to what happens and it is always dependent on the individual case. As far as privacy goes I would have to say that I don't know if it is a cultural or a systemic issue to do with the department itself, I do not know. As far as, without getting into all the details, the way the process is handled.

The fact that - I guess part of it is systemic because the fact that there is not a child and family services committee struck anywhere in the Northwest Territories yet, that is part of the legislation. That doesn't happen right now. To me that is something that needs to happen and its something that should happen. If it is law, then it should happen so the people who are going through the system are being treated fairly under the law as it is written.

If it says in the act that there is supposed to be a child and family services committee, then that should happen and why hasn't something like that happened? That is just one example. I don't want to run on about child protection, we did that a couple weeks ago.

CHAIRMAN (Mr. Bell): I appreciate that and we do want to keep the questions relevant to the act and if possible to the submission. Thank you, Ms. Traynor. Anything further, Mr. Braden.

MR. BRADEN: No, thank you, Mr. Chairman. I do appreciate the comments, I am just trying to explore the context of how this bill might make a difference in people's lives.

CHAIRMAN (Mr. Bell): Any further questions from committee? I do have one question. You made the comment that after going through Ms. Keenan-Bengts presentation you also supported her suggestion that commission counsel be available for people initiating human rights challenges or bringing their case before the commission.

I wanted to ask you, our legal aid system currently does not contemplate this because the mechanism is not available so it is not needed. If we were able to update the legal aid system so that it took this kind of thing into account I guess that would likely address the concern that you have that people do not have representation and it would not necessarily need to be something that is put into this act. Is that correct?

MS. TRAYNOR: I think it would be useful. I think it would be important actually to have it put into the act because if it is not in the act then it is not necessarily going to happen. I think it is a protection mechanism for the people who are going through the process, the complainants. I think it is a protection mechanism for them so they actually - it states that they can have counsel if they desire. I think it is important that it is in act.

As far as updating the legal aid system I think that would be great, I think it is needed anyway aside from this Bill 1. I guess I would be concerned because you know, what can you do to upgrade it sufficiently enough so people have ready access to counsel when they need it, which does not happen right now. There are four lawyers, as far as I know, right now, who are taking on family law cases through legal aid. There is a backlog of 130 to 150 cases, just family law cases.

CHAIRMAN (Mr. Bell): Would you then contemplate that any complainant coming forward should have the ability to have counsel despite how much money they make? So income should not be something that is tested? Because if we are going to get into that kind of thing in this bill we are talking about a whole other realm here. That is why I thought it made more sense since legal aid already has that test, to not make this thing overly complex and not to convolute this further but to allow the legal aid mechanism to handle that and just expand the range of things that you can access legal aid for and include this as one of them.

MS. TRAYNOR: I do not feel comfortable answering that question because I have not thought of it in those terms, a test, and should everyone just automatically get legal counsel? I have not thought of it in depth in that way. I will reiterate my submission that I think community groups should be trained so they can provide advocacy services for people going through the complaint process.

CHAIRMAN (Mr. Bell): Thank you.

MS. TRAYNOR: You are welcome.

CHAIRMAN (Mr. Bell): Any further questions for Ms. Traynor or Ms. Dennison? Seeing none, I thank you for the presentation and I think we will be coming back at 1:30 so we will recess until 1:30 at which time we will meet again. Thank you both.

MS. TRAYNOR: Thank you.

-- BREAK

CHAIRMAN (Mr. Bell): We will come back to order with our public review of Bill 1, Human Rights Act. Committee members again for the record, Mr. Braden, Mr. Lafferty, Mr. Dent, Mrs. Groenewegen will be joining us shortly. I am Brendan Bell. I see Barb Saunders before us, and I think you are next on the list, the Status of Women of Council. I know we have already have a written submission from you, but this is further to that. If you would like to come and join us at the witness table and give us your name again for the record, then you can certainly begin. Thank you.

MS. SAUNDERS: Good afternoon. Barbara Saunders, executive director of the Status of Women Council of the Northwest Territories. I am pleased to present to you today. We have made a number of submissions in writing, and you have those available. What you have before you is simply what I am elaborating on today, which is basically some of the changes and additions to our previous submissions and further elaborations perhaps. I would like to highlight some points which we feel need to be reiterated and re-examined by the committee.

Human rights legislation gives us an opportunity as a society to ensure respect and fairness in a wide range of public spheres in the Northwest Territories. Improvements in human rights awareness and protections are essential to help reduce discrimination against women and other groups, and to create a society of equality for all in the Northwest Territories. The Members of the Legislative Assembly and the Department of Justice have done well in their commitment to developing this legislation and for carrying out the consultation process over the past two years.

There is only thing that I would mention there. What I learned is the need for education before consultation, and I have learned that when people don't understand the legislative process and the bills that are passed, they tend not to come out to public events or come to these sorts of things to have input. I thought I would mention that. Certainly in my experience in the North and with the Council, that is what we are hearing sort of after the fact.

So I am going to start right with the beginning of the legislation in the preamble. We would like to see the preamble expanded to set out the basic and economic rights such as food, shelter, medical care, social security and so on, as per Article 25(1) of the Universal Declaration of Human Rights. I would add as well that we need to look at the draft declaration of rights of indigenous peoples on a universal level. This is becoming very much needed, and is ready to be put in place. As well education as per Article 26(1) and work as per Article 23(1) of the Universal Declaration of Human Rights. It would be prudent as well to add the right to a clean environment to the essentials of life like clean water, and freedom from violence and harassment should be added -- and all other sections of the Universal Declaration and the draft declaration of the rights of indigenous peoples should be affirmed through a general statement.

Prohibited Grounds of Discrimination

As stated in our earlier submissions, we strongly support the addition of sexual orientation and social condition as prohibited grounds. We continue to believe that the following should also be added as prohibited grounds:

- Criminal conviction or charge, with a qualifier that the conviction or charge have no bearing on the employment or service being sought.
- Language, as we are concerned that discrimination based on language may not be adequately covered by the prohibited ground of ethnic origin. This holds true more so for us here when we have so many different languages.

- We want to see as well gender identity to protect trans-gendered individuals from discrimination. In your package is a similar recommendation made by the Canadian Human Rights Act Review Panel in 2000 with respect to the federal human rights act. It is in the back of your copies.
- Political belief or association, or family affiliation. We recommend these be included in the general prohibitions not just in section 7 regarding employment. Political belief is a prohibited ground in the Universal Declaration and in the majority of provincial human rights acts.
- In addition we recommend that place of residence be added as a prohibited ground. We are aware that often individuals may have left one set of rights or benefits by relocating within the Northwest Territories, yet do not qualify for similar rights or benefits in their new location. They, in effect, fall through the cracks because of discrimination based on residency.

Well I am sure you are all ready for the next section on equal pay provisions.

Equal Pay Provisions

We disagree with section 9(1) which adopts the standard of equal pay for the same or substantially similar work because it does not go far enough. Equal pay for the same or similar work must be provided for, but the Council believes that the new Act should go further and also enforce equal pay for work of equal value, or pay equity.

Systemic gender discrimination in pay will not in the NWT unless it is addressed proactively through the new Human Rights Act and the provisions apply to both government and its agents and private sector employers. The standard of pay equity is already in place for the public sector in the human rights legislation of Canada, six of the provinces and the Yukon. It is in place for the private sector in the federal, Ontario and Quebec human rights legislation. So this is not something new.

Our Council further recommends that pay equity be applied to all groups rather than specifically along gender lines. We could, for example, envisage situations where aboriginal people doing traditional outdoor work on the land are paid less than others doing work of equal value indoors because of systemic discrimination based on race in this case.

The Council recommends that the pay equity provisions be included within the new NWT Human Rights Act rather than as separate legislation. Pay equity is about addressing systemic discrimination -- the hardest, the deepest, the strongest discrimination we have -- and therefore belongs within the human rights legislation. The provisions should be as simple as possible with much of the technical information on job evaluation and other mechanisms being contained in the regulations.

We also believe that pay equity provisions will have little impact if they are only complaint-based. Lack of access to affordable legal representation in the NWT would make a complaints-based system inaccessible for workers in many lower paid employment sectors, thus perpetuating inequities. Having said that, the Act will still need to include a provision for individual complaints about pay equity or about equal pay for the same or substantially similar work.

For real systemic change to occur, however, there will need to be an obligation for employers to develop pay equity plans and put pay equity into practice. We recommend that the pay equity provisions apply to both government and the private sector, and to all organizations with more than a certain number of employees.

In addition to providing work place education regarding pay equity and other human rights issues, the staff of the NWT Human Rights Commission should also be trained to teach human resource managers in the Northwest Territories work places to do job comparisons. The commission staff will also need to monitor the progress of pay equity on a continuous basis. As the commission staff will have many other roles around promotion of human rights, complaints and investigations, it may be preferable to have one or two staff specifically designated as pay equity officers and to ensure that they receive thorough training.

The Council recommends that the implementation of the pay equity provisions of the NWT Human Rights Act be phased in over several years beginning with the largest employers.

Harassment

As we have stated in the past, and what makes us often very busy in the office, is personal harassment in the work place. It is a major ongoing issue, about which we receive many complaints. The effects of personal harassment in the work place can be devastating on the victim and poison the entire work place. If the harassment cannot be clearly linked to a prohibited ground of discrimination, currently it cannot be dealt with under the Fair Practices Act or could not be dealt with under the proposed new human rights act. For workers who are not unionized or whose employers do not have anti-harassment policies, there is no recourse other than civil action, which is beyond the financial means of many workers. There must be a provision to deal with personal harassment under the new act, specifically:

- The NWT Human Rights Act should include a statement in section 14, as a new subsection, that sets a general standard of respect for the dignity of the individual and their right to just and favourable conditions of work, and a prohibition of all forms of personal harassment in employment. It should then contain a general statement outlining the obligation of NWT employers to provide a work place that is free of all forms of harassment, whether related to the prohibited grounds or not.

- ☐ The NWT Human Rights Act should also provide for regulations which set out the obligations of employers to show that they have met that standard, by providing information and education for employees on what work place harassment is and by putting in place anti-harassment policies and procedures. The regulations should also provide a mandate for Human Rights Commission staff to do work place education and monitoring regarding work place harassment, and to work with employers to put the necessary policies and practices in place.

The Human Rights Commission

The Council recommends that Bill 1 specify that the commission membership be balanced in terms of gender. We also recommend that there be a requirement to provide regional representation on the commission, and that there be broad consultation by the Legislature on who should be appointed as commissioners. We recommend that commission members be selected from different sectors with some open seats. To us it is important that these sectors be the major groups that suffer discrimination including persons with disabilities, women, aboriginal people, workers and gays and lesbians. In considering the range of interests that need to be represented, we recommend that Bill 1 state that the commission will have six to seven members.

All members of the commission and all commission staff -- and this is really important -- must have gender and cross-cultural awareness training, and the makeup of the commission staff should be broadly representative of the population and of groups that suffer discrimination.

Functions of the Commission

We support the functions of the Human Rights Commission that are laid out in section 20, in particular its mandate for human rights education and awareness. We strongly recommend that the commission have a community grants program to encourage local groups to carry out community-based human rights education activities -- I referred to the importance of education earlier -- these activities that articulate the values of respect, human dignity, diversity and equality in culturally appropriate and relevant ways. We recommend that promotion of international human rights conventions and the draft declaration of the rights of indigenous peoples, and discussion of how they relate to NWT society, be added to the mandate in section 20(d). Research should be added to the activities under section 20(c).

We also recommend that the following be added to the provisions of section 20:

- ❑ A requirement to develop standards and guidelines for the promotion of human rights awareness in various settings -- workplaces, commercial accommodations, etc., and to monitor compliance.
- ❑ A requirement to provide an arms-length advocate for complainants to assist them in understanding the complaints process and preparing their cases. A model for this position exists in the workers' adviser of the Workers' Compensation Board.

I will reiterate the importance of having the complainant have an advocate. When one proceeds with such a formal process of complaint, it is very complicated. Even as much as we are asking you to streamline the process to make it efficient, it is not an easy process for the complainant to go through. We have received a number of cases where we have had to advocate on behalf of women particularly and stay with them, so we understand the emotional and psychological toll it takes on someone, and to work with someone that knows and can work them through is really important.

The Advocate

It should be an arms-length advocate, provided for in the legislation as noted above. I am just reiterating the paramount importance to ensure that there is a fair and accessible complaints process. It would be unacceptable to put in place a process that is more difficult to access for individuals who cannot afford legal counsel and therefore have no way to access legal or paralegal advice. In our experience some complainants who do not have legal advice experience fear and confusion with the current legalistic procedures under the Fair Practices Act to produce evidence, witnesses and so on. The Status of Women Council feels that provision for an advocate is one of the most important additions that needs to be made to Bill 1.

The Complaints Process

Regarding section 23(1) we recommend that the commission be asked for its recommendation on the appointment of the director. We also recommend that all commission members should be involved in the design of the complaints process and other procedures of the commission, rather than leaving it solely under the control of the director of human rights. The commission will be broadly representative of NWT society and groups that suffer disadvantage so it will be extremely important to have their input into the development of the complaints process and other procedures.

We recommend that a provision be added to section 46 to ensure that the director can subsidize the cost of the complainant's travel to an adjudication hearing. We don't want to see a commission made up of political appointments that are going to rubberstamp. We don't want to see all the powers be given to a director, to make a process that perhaps is based on a system that is not conducive to the population of the Northwest Territories.

Adjudication

While an adjudicator will have the power to determine the process for each hearing under the Human Rights Act (section 52(2)), we strongly recommend that the commission itself develop some guidelines around ensuring a very accessible adjudication system so that complaints can be heard as easily, effectively and expeditiously as possible.

We do not agree with section 48(3)(a) which requires that the adjudicators be lawyers, although we do agree that they should have at least five years experience as a member of an administrative tribunal.

A provision should be added to section 55 to state that legal counsel will be provided by the commission for complainants who cannot afford it.

We disagree with section 63 which provides that if the adjudicator regards a complaint as frivolous, or that one party has unnecessarily prolonged the adjudication proceedings, the adjudicator can order that party to pay some or all of the legal costs of the other party. It can be very difficult for a complainant to deal with the adjudication process, especially if the person cannot afford legal help. This may cause delays in the complainant's response to requests for information or other aspects of the hearing process which may be interpreted by an adjudicator as "unnecessarily prolonging" the proceedings, yet is in fact due to a lack of paralegal or legal assistance for the complainant.

A provision should be added to section 66 to state that when a respondent appeals the decision of an adjudicator to the Supreme Court, the commission will cover the costs of legal counsel for the complainant.

In summary, while there are many good provisions in Bill 1 and we have recommended a number of improvements, we have three primary areas of concern that have not been addressed in it:

1. The need to include the standard of equal pay for work of equal value and a proactive application of it.

2. The need to address personal harassment in the work place within this legislation.

3. The need for an arms-length advocate to assist complainants through the process.

We hope the standing committee will recommend that these concerns be addressed through amendments to Bill 1 so that we can move forward with a

Human Rights Act that will truly reflect and benefit the people of the Northwest Territories. Thank you.

CHAIRMAN (Mr. Bell): Thank you for that presentation, Ms. Saunders. I will ask committee members if they have any questions. Maybe I can ask you one about the equal pay for work of equal value. You suggested that Council felt it should apply to private business as well and of some certain size, I believe you indicated. Have you given any thought to what size you envision that would be?

MS. SAUNDERS: Not numbers particularly, but other pieces of legislation do have a ceiling of numbers to look at that. I am not sure what it is, I am sorry, I do not think I have that with me. In one of the submissions that we made to you, if you have them there, we did quote that. I think Ontario has it at 15 maybe. I am not sure that I agree with that totally, but there is generally a ceiling put on it.

CHAIRMAN (Mr. Bell): When we are talking about Ontario, Quebec or the federal legislation, I assume it would be private sector businesses above a certain size.

MS. SAUNDERS: Yes.

CHAIRMAN (Mr. Bell): But no ceiling on that, so I guess more a floor.

MS. SAUNDERS: More of a floor, yes that was what I meant to say.

CHAIRMAN (Mr. Bell): But you haven't discussed what seems to have worked in other jurisdictions and what hasn't worked in other jurisdictions, and what size you think might be the ideal size.

MS. SAUNDERS: We haven't looked at that and made a recommendation to you, no.

CHAIRMAN (Mr. Bell): Thank you.

MS. SAUNDERS: There are lots of examples though.

CHAIRMAN (Mr. Bell): Yes there are and the three you mentioned I guess are the ones that we will want to have a look at. I am aware that Ontario is reviewing this, and I think that in their experience one of the problems has been most of the smaller businesses are not in compliance despite the legislation, and that seems to have been a concern at least in Ontario.

MS. SAUNDERS: Not at this time. They phased in as well and it takes a number of years. They started with the largest number of employees and sort of went down to prepare for it. That is how they brought it in, and some of the smaller businesses haven't been required to because of the number of employees, or if they are just over the number of employees as stated in the legislation there they will being so. If they don't do so then they are in violation of the act.

CHAIRMAN (Mr. Bell): I believe that is the point. I believe they are in violation of the act currently. They claim they don't have the resources of expertise to do the kinds of things that you have suggested would be necessary -- the ratings on various jobs and the writing of job descriptions under a points systems and these kinds of things.

MS. SAUNDERS: Right.

CHAIRMAN (Mr. Bell): Their argument has been that it has been too onerous and that they haven't been complying. I think that is something Ontario is looking at, so this is why I was interested to hear your suggestion on what size of business you thought would be practical. We will leave that.

MS. SAUNDERS: I think we can get those necessary tools though to do that with. They have got them there. More research will reveal the information you need to...

CHAIRMAN (Mr. Bell): Okay. Any other questions from committee members on the presentation? Mr. Dent.

MR. DENT: I would like to discuss with Ms. Saunders the makeup of the Human Rights Commission. It is interesting. Committee members have heard and there has obviously been some discussion about the selection of membership on the commission and the concern that they not be seen as political appointees if you will. When we were in Inuvik one of the presenters that we met with was Mr. Richard Nerysoo and he expressed a concern that this legislation was supposed to be so general and broad that it wouldn't be appropriate to have representatives from certain groups appointed to oversee the legislation. He was very concerned that people not be advocates for their group as commissioners, but be seen instead as people who had generally the best interest of the peoples being appointed.

He didn't disagree with the idea of finding people from outside the Assembly to perhaps work to find ways to recruit membership among the commissioners. He thought that might be one of the ways to assuage the concern about political appointees. The committee finds itself in a bit of an interesting situation when we get people presenting opposing points of view about how the selection process should unfold, and how do we choose what is the right way to make the recommendation. I would like to ask Ms. Saunders if the Council has ever given any thought to -- are these advocates for their particular group that we are looking for? When you appoint people to a board typically they have a constituency that they represent there, but Mr. Nerysoo was saying that people appointed to this commission should not be there to represent a constituency. They should be there to represent the public and the broadest possible public.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Saunders.

MS. SAUNDERS: What we want to avoid I guess and what we want to see is fair and equitable representation on the commission rather than it being another political body in so much as it would be for the political powers that be. Human rights are more important than any political aspirations. The Human Rights Commission can reflect the population, I believe. There is further discussion that we will have around this with my new council as to how exactly that should look. Should it be part special interest group or should it be by sector -- labour and aboriginal groups -- two or three from the Legislature -- two or three open -- the health sector -- sort of the major areas. The advocate is someone who should be paid by the commission to assist someone through the process, and that person would generally be at arms-length. The commission should have the funds like the grants program that we speak of here for education and awareness as one way of getting that across, but also one way of providing some supplementary financial assistance to the advocate that helps the complainants.

Like we do at work. We get a phone call and people are very upset. They have been harassed and they are sometimes in a very delicate position, and they do not know what to do. They have exasperated all the channels. They have called Fair Practices and nothing has happened. They have done, they have done that, but the harassment continues and what recourse do they have? So then we start taking procedures. We talk to them, that advocacy work for the human rights process is separate from the makeup of the commission. I am not sure if I am answering your question correctly, but I do see more discussion around the makeup of the commission with our new council to solidify that a bit further. We had discussions on it before this was written, put it that way.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. Mr. Dent.

MR. DENT: Thank you. I wasn't specifically getting into the advocacy issue. A couple of the presentations we have received so far have expressed concern about the Legislative Assembly being the one being responsible for appointing the commissioners. I was interested in your response. We have also heard the opposing point of view that the Assembly might not be so bad, rather than having -- it is still a political organization if you have sectoral representatives that are there to represent certain sectors. They bring the politics of their body to the commission as well. It is hard to get away from this called politics. I guess we are trying to wrestle with what sort of recommendations we make along with this bill going back to how the commission is appointed.

I think it is important to remember that the commission's main function is education and reporting. They do not hear any of the cases, so knowing that, if we could find a way to broaden perhaps the process of gaining nominations for the commission, do you think there would still be an objection to the Assembly being the final place where the appointments are made?

CHAIRMAN (Mr. Bell): Ms. Saunders.

MS. SAUNDERS: No I think you have hit what I was trying to get at as far as the differing sectors submitting nominations. I would even suggest that they submit, for example, four names. Two of those names have to be women. Because it is a political body of the Government of the Northwest Territories then they are selected by the Commissioner I believe through the Legislative Assembly, correct?

CHAIRMAN (Mr. Bell): The Commissioner would formalize the appointments, which would really be made by the Legislative Assembly.

MS. SAUNDERS: Exactly. Those nominations coming forward then the Legislative Assembly would make the selection from there, keeping in mind the gender parity, which is ultimately very important.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: One other area I would like to pursue. I don't know if Ms. Saunders has had a chance to have a look at Ms. Keenan-Bengts' submission, but perhaps if not you could have a chance to look at it later. We heard from Ms. Keenan-Bengts this morning -- who is a current Fair Practices Officer -- and she basically told us if it ain't broken don't fix it. She said that she felt that the current system was working fairly well, and what we were looking at in this current legislation was going to bureaucratize the process to such an extent that it was going to make it much more difficult for people to get through. I think you have taken an entirely opposite point of view here in terms of your talking about community grants, talking about trained pay equity officers that could help out individuals and private businesses. You are talking about a fairly large bureaucracy and fairly expensive obviously then, in comparison with what we have right now.

I guess I would have to say that in your experience then the system is broke, and what we need to do is fix it substantially. Is that the case?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Saunders.

MS. SAUNDERS: Am I allowed to say "no comment"?

CHAIRMAN (Mr. Bell): I think you can say whatever you like.

MS. SAUNDERS: I think when we were talking I remembered I was here eight or nine months and I didn't know where to refer this person, and I said "What kind of an office is that?" Then the Fair Practices Office was explained to me. Then I said, "Why haven't I heard about this. Where is it in our file? Where is it here that it shouldn't be so easily accessible? What do they do there?" It took me quite a while to find out. To me that was a glaring example of lack of accessibility. I think that a human rights act says more than what you have presently -- the whole act.

If I could speak in bold italic underlining, I would say "education and awareness" would be your top priority with the commission, but also the process of a complainant going through. That has to be non-judgmental and it has to be available -- store front, right there so people know about it. That is my sort of response to that. I look forward to reading her submission.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. I guess we did hear from the Fair Practices Officer making the case that we needed something less complex. I think you are talking about something that is a little more involved, but to be fair to Ms. Keenan-Bengts she did indicate as well that the one key feature missing was this public education role. Maybe I can ask you a bit about the role of the commission. We know that it is proposed that it will have this public education. It will also have an advocacy role and at times be able to shoulder complaints and initiate them. Would this not be the advocacy role that you are speaking of and talking about? This ability to carry forward a complaint on behalf of somebody?

MS. SAUNDERS: No, the advocacy role I am talking about is more personalized. The individual advocate would help an individual with the complaint process. The commission would advocate overall in the bigger complaints process or take on more bigger, I would think, situations such as industry or bigger and larger bodies of violation of human rights.

CHAIRMAN (Mr. Bell): So despite the fact that the director will have staff who would, I guess, help people formulate a complaint, if they needed help, you feel there needs to be an arms-length person or body that plays this role?

MS. SAUNDERS: Yes.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman,, and thank you, Ms. Saunders, for taking the time to provide such a thorough piece of work on this. I can see that this is a significant piece of legislation is not lost on the Council. In your discussion of the idea of rights, that this bill should be expanded in its preamble to discuss "basic social and economic rights such as food, shelter, medical care, social security and so on." I would like to get a better understanding of just what you mean by that word "right". If a citizen has a right to, say, medical care. Indeed in Canada we all have a right. It is paid for. It is assumed by the public purse that medical care will be provided as needed.

I think that is certainly different from the idea that food or shelter is provided by the state as a given. Could you tell us a bit more about your definition or how you see the state's obligation to provide for some of the rights that you have described here.

CHAIRMAN (Mr. Bell): Ms. Saunders.

MS. SAUNDERS: I cannot see it being anything else. When we are talking about human beings we are talking about our brothers, our sisters, our relatives, our neighbours -- human beings. If we as a society cannot say that we will do what we can to ensure our society is society, we will do what we can to ensure that the members of that society -- they have a right to live. In order to live you must have food, you must have shelter, clean air, clean water and in this day and age we have to make it a right because those things are being taken away from us at an incredible rate. Our air is being polluted. Our waters are being polluted. Our waters are being commoditized. We have to allow for the rights of people to survive physically, and in order to do that we need to say that the basic human rights of any person are to have food, shelter, clean air, medical aid. If you have fallen in the street you have a right to be taken care of.

Social security -- I cannot envision a human rights act without that. I would go further to put in clean air as part of the environment simply because of the makeup of our world now and what is happening to it. Reinforce our commitment to a liveable world. As tiny as we are here in Northern Canada we are still part of the global village, and every person in each part of each village in the world did their bit, pe4rhaps we wouldn't have the pollution, bad water and the illness that we have now. Philosophically it is a very strong message, and legislatively it is even stronger.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. Mr. Braden.

MR. BRADEN: I guess when the ball comes back in our court here we will certainly try to pursue philosophically, morally or ethically the highest road and then it becomes a question of deliverability. Can we actually perform as a government to provide if not a physical shelter or guarantee a physical shelter over everyone's head; guarantee the opportunity for access. Everyone shall have access without discrimination, without any qualifier whatsoever they shall have access to these things. I like the inclusion of the environment here. It becomes very subjective. What is one person's definition of a clean environment maybe different from somebody else's. As a government I think these are desirable things for us and can and should be stated in some fashion. Being able to deliver on them, then we get into that tussle. What is one person's definition or idea of what can be done? What is affordable? What is doable? That is where we really have to start measuring the priorities.

A couple of other areas that I wanted to scope out, and I appreciate the inclusion in here of the idea of place of residence. That is something that should be talked about as a prohibited ground. I think it has come up in a couple of other presentations too. How doable is this, Mr. Chairman? Maybe that is a question that counsel can help me out with -- where we have inter-jurisdictional situations. Perhaps a member of, say, an aboriginal band in Ontario living in the Northwest Territories claims a certain right or vice versa, what obligation or what powers would we as a government have to enforce something that is outside of our jurisdiction? Is there any kind of cross-over that we could count on or is already built into some law, or are we starting to build a new area of right here? Thank you.

CHAIRMAN (Mr. Bell): A question for our counsel, Mr. Braden?

MR. BRADEN: Certainly for Ms. Saunders if she has some ideas there and then maybe counsel can offer some more technical information.

CHAIRMAN (Mr. Bell): Ms. Saunders, if you have some thoughts on this point that Mr. Braden is making.

MS. SAUNDERS: There are two points made. First when we were talking about the expansion of the preamble, I believe that these things are not subjective. I believe that they are the very pit of this legislation. If the government feels that they cannot afford these things then you shouldn't be in government. If you cannot provide and ensure life of your constituents, why have it? I am very strong on that. Unless you start taking a very strong route and saying no, we are going to have a clean territory and we are going to have this and we are going to make it happen, and we are stating it here. Let the other governments live up to that. Start spending money on it.

What happens if you have an economic boom and nobody comes? Like what is happening you know because we have no housing. Excuse me, I had to say that because I am a human rights advocate. As far as the place of residence is concerned, we are looking at programs within the Northwest Territories although the Act itself does not deal with programs. It does deal with services. So if you come from Inuvik to Yellowknife, what will be affected precisely? I would suggest that you look into that to see what precise programs or what precise elements would be affected. That is what we are talking about as far as residence is concerned. If someone is not afforded some service because they have recently come from the south, or they have recently come from Nunavut or from anywhere else and landed here, what then?

Place of residence, I think where we were coming from on that is within the territory, so where you live you are not discriminated against because of that. I live on the -- I am not quite sure of the technical parts of that. As you said, we need to look at some technicalities. I was thinking of the Hay River Reserve and I come to Yellowknife. I cannot answer that right now, but that is basically what we mean by that.

MR. BRADEN: Within the territories, thank you.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. Mr. Braden, did you want counsel to this point or do you want to move on to something else?

MR. BRADEN: Mr. Chairman, while we are at if counsel has a couple of thoughts, I would appreciate it, especially on the idea of what could we do when someone may feel that a right is being denied because -- from some other part of Canada.

CHAIRMAN (Mr. Bell): I will go to Ms. Peterson and then I will move on to ask Mr. Lafferty if he has any questions, and we could come back to you if we still have time.

MR. BRADEN: Okay.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I am having trouble bringing to mind a concrete example of what might be the issue of concern. Rights tend to be fairly portable in the sense that those things that are protected as rights in other jurisdictions are protected by legislation of this sort in a place where the person may ultimately live.

Within the territories, if there are restrictions on access, say to certain programs -- that you can only access a program if you have lived in this community for X number of months or years or something like that -- the issue would then become whether that is that a bona fide barrier. It would have to be examined whether that barrier is legitimate, but it still has to be tied to the prohibited grounds and place of residence is not, in this Act -- discrimination on the basis of place of residence is not included as far as I know.

CHAIRMAN (Mr. Bell): Thank you. I think you can think of all kinds of examples of government programs where we run foul of this kind of thing - student financial assistance, lending money to people based on whether they are coming from a level 1, 2 or 3 community. There are all kinds of realms. On-reserve housing that you would eligible to receive if you live on a reserve and certainly not if you live a kilometre away. Tons of examples. This is something that we can probably have some more discussion about. I will ask if any other committee members have any other questions. If not, I will go back to you, Mr. Braden. Mr. Lafferty.

MR. LAFFERTY: Thank you. Just one small question here under the complaints process and the last paragraph where it says: "We recommend that a provision be added to section 46 to ensure that the director can subsidize the cost of the complainant's travel to an adjudication hearing." Would you like to see something in there to support, say, not an employer but another manager that is going to be charged with harassment or whatever complaints they have against him get their travel paid until the hearing has found who is in the right? To be fair, a lot of companies -- even the public governments -- have people in there that cannot afford their own travel to go to hearings. As you know all the courts are in Yellowknife and a lot of travel is needed to go to hearings like this. If we are going to do it for one side, shouldn't we do it for both sides until we find out who is in the right? Should there be something in place for them?

CHAIRMAN (Mr. Bell): Ms. Saunders, how did you envision these new provisions that you are proposing?

MS. SAUNDERS: Keeping in mind the expense of travel in the North if we have a complainant in Holman Island the adjudication process is in Yellowknife, how does the complainant get there? Is the adjudication process under section 46, will that complainant be able to get to the adjudication panel? The adjudication panels would move, I would assume in the territories, to the major centres where they would do that. Or will the panel move to Holman where the complainant is?

It is like a barrier. If you have someone in a smaller community that has a legitimate complaint, how do they get to present it if they can't afford to get to the adjudication hearing?

CHAIRMAN (Mr. Bell): I guess the question is, is it a barrier for the complainant or also the complained of. I think that was Mr. Lafferty's question. Are you proposing that the ability to get to -- we haven't had much discussion about where the adjudications would take place. Those kinds of details will come out after more discussion I suppose. As far as that goes, how do you see that? Are you making the case just that the complainant be provided travel, or both parties?

MS. SAUNDERS: Just the complainant.

CHAIRMAN (Mr. Bell): Okay, thank you. Ms. Peterson, I know that you had a couple of questions.

MS. PETERSON: Just a couple of things. One a clarification of the issue we were just speaking about. The Act provides that the adjudication panel can craft its own procedures and guidelines, so I am assuming that that would be one of the criteria that they would have to address their minds to in terms of how adjudication is going to be accessible to individuals.

Secondly I believe that the Act contemplates that in any given instance of adjudication a single adjudicator will be the person who hears and decides the complaint. It does not appear to contemplate a panel structure. Just a couple of points to clarify on that.

I just have a couple of questions. At the beginning of your presentation you refer to other submissions that you have made. Would those be submissions that the group has made to the Department of Justice in the consultation process?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Saunders.

MS. SAUNDERS: While we had meetings with the Department of Justice combining our research and our knowledge and stuff, the Council made submissions to the committees at every opportunity we had from 1997 through 2000.

MS. PETERSON: I see, to legislative standing committees?

MS. SAUNDERS: Yes.

MS. PETERSON: As opposed to the Department of Justice?

MS. SAUNDERS: Yes.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. In terms of including some of the rights that you mentioned in the preamble, and I am thinking specifically of the rights to food, shelter and a safe environment, how do you see including those rights in the preamble as advancing those issues?

CHAIRMAN (Mr. Bell): Ms. Saunders.

MS. SAUNDERS: I believe it will guide perhaps other governments to look more seriously at a balance between social and economic -- I don't want to say agendas -- but work where sometimes governments are focussed only on the economic aspect, and the humanitarian aspect gets left behind. When they see they have a legislated commitment to the people that they serve, I think would present more impetus to make a balance between economics and society.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. With that, I gather there is some recognition that including them in the preamble the Act itself doesn't provide any mechanism for thereafter promoting or dealing with those particular rights. Are you saying that the statement of them in the preamble is creating a statement of philosophy which you feel would advance those interests in a significant way? Or a statement of commitment by the government that those are important issues? Is that what you are seeing as the principal effect of that being included in the preamble?

CHAIRMAN (Mr. Bell): Ms. Saunders.

MS. SAUNDERS: Yes, I think you have probably worded that better than I could, but I think we can take from the Universal Declaration of Human Rights, glean out the best and glean out the best from the declaration of rights of indigenous peoples. Although it is only a draft declaration, it is powerful too, and we have many aboriginal people in the Northwest Territories and we haven't included them in addressing their values and principles. Perhaps I would suggest that the insertion of and more research into the draft declaration of the rights of indigenous peoples be appropriate.

CHAIRMAN (Mr. Bell): Thank you, Ms. Saunders. We are slightly over time, but if there is anybody who has final questions we will entertain them. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. There is one more point that I wanted to explore and this is the idea of the advocate, which is ringing some common bells with other people too. I think in the Act does it suggest that commission counsel be appointed? Is that something that is in the Act, or did that come through in another submission?

CHAIRMAN (Mr. Bell): That is not contemplated in the Act, but it has been discussed.

MR. BRADEN: Okay. The idea of some structured formal assistance being given to complainants to help them through the process seems to be a popular idea. Building on your comments here, and the work that you already do on behalf of complainants, should organizations like the Status of Women Council or others be mandated as a delivery agency if you will of that Council service or, as you say, that advocacy service? Should the Act go that far as to mandate NGOs to be part of the process? Would your organization want to go that far? Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden, and I missed the question, I am sorry about that. Ms. Saunders.

MS. SAUNDERS: That is okay. If you increase my budget by $500,000 a year, yes we would take it on, sir. However, I think that with consultation with NGOs we could best advise as to how that position would sit. It has to be arms-length, as we have stated here, and certainly sort of separate from the rest to ensure that there is no bias or prejudice. How that would simply work, NGOs maybe the way to go, but already for the most part they are over worked and under paid.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden.

MR. BRADEN: Thank you very much. That essentially provides the answer. My question was certainly in the context – when I said that NGOs could be mandated to be part of the delivery process they would also be funded. There would be no question of that. That is just a comment. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Thank you, Ms. Saunders.

MS. SAUNDERS: In conclusion, I would just like to say that I am meeting, as you know, with my new council next week. The Human Rights Act is on our agenda. There will be discussions with the new council, and I hope at that time that they as a new council will be able to bring forward their final position on the Act, if that is acceptable.

CHAIRMAN (Mr. Bell): Thank you for appearing here before us today. We do have a schedule to keep. We are going into the House trying to make sure that we move this along fairly expeditiously and have something to present to the government in the next sitting. If there is something coming after those meetings it will have to come as quickly as possible and I am sorry about that but that is how it is going to have to be to work for us.

I do appreciate the submission and having you appear here before us today and the work that you have done prior to this as a council. I think the committee is very well aware that this is very important to you so we appreciate the time you have taken to come here today and present to us. Thank you.

MS. SAUNDERS: Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): If there is anyone else who is not on our list to appear as a witness but would like to make a presentation, we certainly would be willing to hear from you if there is anyone in the audience. Seeing no one indicate we did have one presenter who was scheduled to be here and is unavailable to attend. He did send us some comments. Mr. Dent.

MR. DENT: Mr. Chairman, I understand that Mr. Beck had asked that his comments be read into the record and what I would propose is to make a motion that his comments be deemed read into the record so they show up in Hansard and are on the public record and that we make copies available for other people who attend our public meetings. I will make that motion.

CHAIRMAN (Mr. Bell): Thank you. The motion is in order. To the motion. Question has been called. All those in favour? Good. The motion is carried and we will make them available for anyone who is interested, it will be at the back of the room with the other submissions you have seen today. Mr. Lewis Beck's submission is deemed read into the record. Thank you.

SUBMISSION BY LEWIS BECK: Dear friends on the Northwest Territories Human Rights Bill Committee;

I was hoping to be able to address you in person but difficulties with my vehicle prevented me from making the connection for my flight from Fort Simpson to Yellowknife. Therefore, I am putting down more or less what I was planning to say in hopes that someone could read it on my behalf. Here it is:

It is a great honour to be able to address your committee, especially on such a significant date as September 11, the first anniversary of the attack on the World Trade Centre. Such a terrible thing is in itself a human rights issue from start to finish.

To celebrate International Human Rights Day, 1996, the Fort Smith Unity Project initiated a three-day Human Rights Conference. To this conference, we invited representatives of many different equality-seeking groups, groups such as the disabled, Dene-Metis people, elders, youth and women. We heard from people familiar with international human rights issues, from educators, from the Canadian Human Rights Commission and from the Yukon Human Rights Commission. Our approach was, basically, to invite each of these representatives to speak freely about what human rights meant to them. The outcome of all this was, to say the least, illuminating.

We learned that, like happiness, human rights are different things to different people. Disabled people want, first and foremost, to be recognized and accepted as people and secondly, they want to be enabled to take a meaningful role in society, just the same as anyone. Dene-Metis people want to be able to speak their language, to practice their culture and to go out on the land as their forefathers did; in short, they want simply to be allowed to be themselves.

The most important outcome, though, was an increased sense of understanding among all the above-mentioned groups.

The world is evolving in a good direction, even though it may not seem so at present. Such disasters as the attack on the World Trade Centre shake the very foundations of our sense of collective security. However, there is a God there for us Who has a plan and, whether we know it or not, that plan is unfolding as we speak. Believe it or not, 9/11 is helping to hasten the unfolding of that plan. "World peace is not only possible, it is inevitable."

The writings of the Baha'i Faith define human rights as "those conditions which allow for the development of our God-given capabilities". The proposed Northwest Territories Human Rights code will help guarantee that those conditions will be obtained for everyone here on our corner of planet Earth.

So I would like to offer my warmest congratulations and encouragement to the committee. I am sorry I cannot be there in person to do so but this will have to do. My thanks to whoever is reading this on my behalf.

Sincerely, Lewis Beck

CHAIRMAN (Mr. Bell): We will recess now until our next presenter at 7:00. Thank you.

-- Break

Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, Human Rights Act

September 11th, 2002

Yellowknife, Northwest Territories

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Deputy Chair:

Mr. Leon Lafferty, MLA for North Slave

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Witnesses:

Richard Lowe, Yellowknife Resident

Aggie Brockman, NWT Council for Disabled Persons

Noeline Villebrun, Yellowknife Tso'Tine Society

Lawrence Jean-Marie Beaulieu, Yellowknife Tso'Tine Society

Mark Cassaway, Yellowknife Tso'Tine Society

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Kelly-Ann Fenney, Committee Researcher

Ms. Katherine Peterson, Law Clerk

STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Hearing on Bill 1, Human Rights Act

Yellowknife, Northwest Territories

September 11th, 2002

CHAIRMAN (Mr. Bell): We will come back to order with the public review of Bill 1, the Human Rights Act. Again, the committee members are Mrs. Groenewegen, Mr. Braden, I am Brendan Bell. We are expecting Mr. Dent shortly. Committee staff Mr. Inch, Ms. Fenney, Ms. Peterson and I believe we have Mr. Lowe on tap here next to present. You must be Mr. Lowe.

MR. LOWE: I am indeed, sir.

CHAIRMAN (Mr. Bell): Please join us at the witness table and if you could introduce yourself again for the record and then begin your presentation. We will be going through the chair for any back and forth. We may have questions for you from the committee. Thank you.

MR. LOWE: Thank you. My name is Richard Lowe. I reside in Yellowknife. I am an aircraft maintenance engineer with Air Tindi. I would like to speak to you on two things this evening. I do not have written text as I found out about this Friday.

Two points I want to make. I understand that you are going to pattern your Human Rights Act after the Declaration of Human Rights of the United Nations in 1948. The declaration in 1948 had a provision, Article 17 of the Declaration of Human Rights reads: "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

I interpret property to mean land, housing as well as goods and chattels. In the Canadian Bill of Rights of 1960, in part 1, 1(a): "the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law."

Then in 1982 when the Charter of Rights and Freedoms was introduced by Trudeau, there was a rather interesting omission. Under legal rights, 7, "everyone has the right to life, liberty and security of their person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. What was missing was the enjoyment of property.

I had occasion on or about 1982 coming into discussion about this. I read the Bar Association's dissertation on this particular issue. What they said was that it would be a most interesting case when it ever came to trial. My understanding is that that has not occurred to this time.

I am going to suggest to the panel that this particular clause about enjoyment of property becomes very important. It has been pulled from our Charter of Rights and Freedoms and I believe wrongly so. It sets in motion, or can set in motion, a series of events that can directly affect the family. That is my second and most important point.

I have not read your Bill 1, I do not know what it includes, but I have read the Declaration of Human Rights as presented in 1948 as well as the Canadian Bill of Rights and Charter and all the other associated documents with this. If I can just read from the Declaration of Human Rights, Article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation." "Everyone has the right to the protection of the law against such interference or attacks." There is the reference to home, property. It also now brings into it family.

Article 16. I will not read the whole thing. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state." Article 17, "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

In the Canadian Bill of Rights, in the preamble, "The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions."

So we come now to family. What I would like to suggest to you as a panel is that if you incorporate the enjoyment of property into your proposed Bill of Rights it will go a long way to solving a lot of the problems that are now facing us with regard to family.

I would like to see in your Bill of Human Rights not only that you are protected by race, sex, religious or marital status, but that you are of equal status as a father and as equal status as a mother. Without that you are going to have the mess that I find myself in which has been addressed by the Joint Committee of the House of Commons and the Senate called For the Sake of the Children. It was addressed somewhat in 1989 by the Convention on the Rights of the Child and it talks about discrimination.

Discrimination is real, it exists to this day. It is denied emphatically by the judicial system and is recognized by every lawyer in this country. There is no getting around it. Of the 100 people that constitute the workforce of Air Tindi I know of three men, myself included, who are the subject without question of bias and prejudice in the court because we are fathers. No other reason.

If you incorporate wording that protects both the father and the mother, in those terms, I think that you will set a precedent in this country that requires, although we are supposed to be protected in all of these other documents, we are in fact not. I think you would be miles ahead of the game and you would stand at the forefront.

That is the extent of it. I can go on and on and on. Those are my comments.

CHAIRMAN (Mr. Bell): Thank you, Mr. Lowe. We will see if the committee has any questions for you for clarification. Any questions from committee members at this point? I do have one for you and I am not sure if you know the answer, when you talk about the right to enjoyment of property and suggest that it has been left out of our federal legislation, are you aware of – all other jurisdictions in Canada save Nunavut have human rights bills. Do any of them refer to the enjoyment of property?

MR. LOWE: I cannot comment on provincial or territorial acts but I can tell you that the Charter of Rights and Freedoms omitted it. When I read the Bar Association's dissertation on it, it was prepared by legal people and they said it would be very interesting when it comes to court. I had to raise the issue with the Highways Department of British Columbia of all people who decided they were going to expropriate my land, and I said no you are not.

When I raised that one issue, a bank of lawyers, there had to be ten of them, closed their briefcases and up and left. I was left alone in the room. It is a powerful clause. To put it back into your proposed bill I think would be very interesting.

The protection of family, and if you want to get into this I will talk all night. I have five children by a woman that I never married. I came to Yellowknife in the fall of 1999 and three months after I got here she phoned me and said, "Don't come back." She had already filed with the Supreme Court of B.C. and the interim order gave her exclusive use of the house and all its contents. I came to Yellowknife with my tools and an electric frying pan and I live in my car. In three years I have seen my children twice. What else do you want to know.

CHAIRMAN (Mr. Bell): I guess that clears up my second question, and it was that you had indicated that although we will not find this discrimination in any legislation you believe that there is systemic discrimination against fathers in custody situations that exist across the country, is that correct?

MR. LOWE: It is documented in the summary, in the Joint Committee, the summary of recommendations in their document For the Sake of the Children, it is right there. They recognize gender bias. It has been recognized certainly by the four lawyers that I have been in contact with both here and in B. C. It was recognized, I believe in April of 2000 there was an article in the Canadian's Readers' Digest that addressed this whole issue. The Alberta Report has done at least two articles on it that I know of. It exists.

CHAIRMAN (Mr. Bell): Thank you. I just wanted to make sure I was understanding your point. Any other questions from committee members? I want to thank you for coming out tonight to present. We appreciate it.

MR. LOWE: Thank you for hearing me.

CHAIRMAN (Mr. Bell): Thank you. I guess we are going to recess until 8:00 when Ms. Brockman will be in front of us with the Council for Disabled Persons, so if we could be back here at about quarter to eight. Thank you, sir.

-- Break

CHAIRMAN (Mr. Bell): We are back on the record. Committee members Mrs. Groenewegen, Mr. Dent, Mr. Braden, I am Brendan Bell. We have Aggie Brockman set to present here tonight on behalf of the NWT Council for Disabled Persons. So, Ms. Brockman if you would like to join us and introduce yourself for the record we can get started.

MS. BROCKMAN: Thank you very much. Just as a point of clarification it is the NWT Council of Persons With Disabilities. The organization changed its name almost a year ago.

CHAIRMAN (Mr. Bell): My apologies.

MS. BROCKMAN: No that is fine. My name is Aggie Brockman and I am the executive director for the NWT Council of Persons With Disabilities. The council welcomes this opportunity to provide input into Bill 1, the NWT's first Human Rights Act.

The council hopes it can assist the committee with their work by briefly describing persons with disabilities in the NWT; providing a brief background about the council and providing some suggestions that we think might improve this legislation.

The council is a registered charity directed by an elected board. The majority of the members of that board are people with disabilities or family members. Our mission is to achieve self-determination and full citizenship for persons with disabilities. We do this by promoting awareness, opportunities, choices and participation in all aspects of life in the NWT.

The NWT Council of Persons With Disabilities was started by a group of parents in 1975 and incorporated as a society in 1978. It is the only territorial cross-disability organization. That is, we represent people with any kind of disability across the NWT.

We provide awareness, information and education. We are involved in the development of public policy affecting persons with disabilities; and undertake special projects and research. The programs we deliver include a 1-800 disability information line, accessible parking program, early childhood intervention services and employment supports.

The proposed Human Rights Act is a significant piece of legislation for persons with disabilities in the NWT. To help you understand why this is the case I would like to provide a bit of information about people with disabilities.

According to the 1991 Health and Activity Limitation Survey, 13 percent of the NWT population has a disability. In 1999-2000 a needs assessment of persons with disabilities was conducted in the NWT. It provides information on the nature and distribution of disabilities, the gaps in and future requirements for services among this population. Community service providers expect increases in the numbers of people with disabilities in the future due to an aging population and high risk behaviours.

Who are the people with disabilities in the NWT? Males and females are equally likely to have a disability. Aboriginal people are twice as likely to have a disability than other residents. One quarter of people with disabilities understand a language other than English best. Sixty-one percent of persons with disabilities in the NWT over 15 years of age have less than grade 9 education which compares to 13 percent in the general population. Twenty-six percent of persons with disabilities 15-59 years of age have a job. That compares to 71 percent of the general population that have a job among that age group.

Among adults with disability who participated in that needs assessment, 80 percent had personal incomes of less than $20,000 per year; 48 percent had incomes of less than $10,000 per year.

The needs assessment made some significant conclusions about the need for programs and services among people with disabilities. There are nearly as many people with disabilities who still need services as there are those receiving them now. Rehabilitation, assessment, specialized or individualized intervention, alternative treatments, financial assistance and advocacy and information are the programs and services in most demand.

Human rights legislation affirms the significance on an individuals lived experience. It acknowledges a society's deep commitment to equality. It recognizes that even though 90 percent of the population might have access to a job, a facility or a service that there remains an obligation that those rights apply to 100 percent of the population.

A Human Rights Act in the Northwest Territories is crucial to ensuring that people with disabilities have full access to some form of remedy when their rights are not protected or recognized. Disability is the single most often sighted ground for discrimination in complaints to other human rights commissions in the country. We congratulate this Assembly and the Department of Justice for the work they have already done on this bill and we urge MLAs to ensure that the most progressive human rights legislation in Canada is passed in the NWT before the end of your term.

Now to make some comments specific to the bill, we suggest that the introduction and the Bill of Rights included in the Yukon Human Rights Act could provide a model that would provide a much clearer and perhaps inspirational indication of what the intent of the legislation is. What is currently found in the NWT draft. We would like to see a Bill of Rights in the NWT Act. In the introduction and interpretation section, under the definition of disability, we are delighted to see that the intent is and there is some wording there to include perceived disability and a predisposition to developing a disability included in this act. We think these are very significant distinctions.

An example might be someone with a diagnosis of HIV or multiple sclerosis who does not exhibit any symptoms, it is important to ensure there is no discrimination against people who may have a predisposition or a perceived disability as it is for people with actual disabilities.

We do appreciate the attempts in the current draft to ensure that disabilities such as learning disabilities and psychiatric disabilities are included. It is the role of the council to ensure that act includes all disabilities and that definitions do not narrow the scope. We see the attempts to define disability particularly in subsection (a) of the definition by including a number of examples as somewhat problematic.

Someone who does not see their particular disability listed may not believe they are included in that definition. We believe this detailed definition has the potential to narrow the scope of who will be covered under this legislation.

-- Break in Tape

...word "handicap" at least I think now currently is understood more to refer to an environmental or attitudinal barrier and should not be used interchangeably or to mean disability.

We would suggest that there is and will continue to be a considerable amount of case law defining disability in the human rights context. We would like the definition within the NWT Human Rights Act to be as straightforward as possible, as simple as possible and as inclusive as possible. We are not convinced that a detailed definition is the way to achieve those goals. We have concerns that the current definition has the potential to narrow the definition rather than be inclusive. I think I would like to point to the Canadian Human Rights Act as an example of something -- they have a fairly clear and very simple outline. They don't actually define it in any way in detail. I think that we could use that as a model. If we did want to do some additional clarification above simply if you have a disability, perceived or predisposition, perhaps we might want to include, as they have, the inclusion of alcohol and drug dependencies to ensure that the territorial legislation is clearly consistent with the disability provisions available under federal human rights legislation.

In terms of other prohibited grounds of discrimination, we are aware that in at least one Canadian jurisdiction a disability consumer group is looking at having the definition of disability for some government programs expanded to include transgendered individuals. We would suggest that gender identity should be included as a separate prohibited ground for discrimination within the NWT. We also share the concerns of those who note that there are a large number of Northerners who come into conflict with the law and the potential negative impacts of that on their futures particularly for employment prospects.

While we are not aware of any specific research in this area within the NWT, the numbers of people with disabilities who we know about anecdotally who come into conflict with the legal system is of concern to us, and I think to others in the disability community. We agree with the suggestion made by the Status of Women Council of the NWT that a new prohibited ground of past criminal conviction or criminal charge be added to the Act with a clear provision that it only apply if the past criminal circumstance is not relevant to a particular job in question.

Moving on to the functions of the Commission, we believe that the education and promotion functions of a Human Rights Commission are among its most critical duties. These functions are central to the protection of disability and other rights within the NWT and to achieving the ultimate goal of eliminating discrimination and the abuse of human rights.

We recommend that the Act be strengthened to clearly state that the Commission shall do those things listed in section 20. Those functions include promote a climate of understanding and mutual respect, promote recognition of the dignity and worth of every individual, develop and conduct programs of public information and education and promote understanding and compliance of the Act.

We like the suggestion of the Status of Women Council that the Commission might administer a grant program to involve community projects to assist the Commission in its education and awareness role.

Other functions which the Commission should be responsible for include research and the development of standards and guidelines. Appendix A to the written submission that I passed on just a few minutes ago includes a written report published by the British Columbia Human Rights Commission. This particular report documents barriers faced by people with disabilities when trying to access government programs and services in British Columbia. We offer it to you as an example of the kinds of research which would aid the proactive approach that we would like a Human Rights Commission in the NWT to take.

In terms of developing standards and providing guidelines, we would like to point out that this is a function of the Canadian Human Rights Commission, and it is of great assistance to specific sectors in ensuring respect for human rights. One example that we would like to cite is A Place For All, A Guide to Creating An Inclusive Workplace published by the Canadian Human Rights Commission in 2001. The executive summary and the publishing date information I have included as well as an appendix.

We are concerned about access to the complaint process, and that there be assistance for complainants during the settlement, investigation, complaints and adjudication processes. Complaining to any established agency, particularly in writing, is an intimidating experience for many people but especially for those who may be marginalized or already at a disadvantage. It is difficult for some people to understand the kind of processes outlined in this legislation and to have patience with systems that appear to take a long time in resolving issues. Many people will require an advocate, moral and other kinds of support, in order to have access or equal access to the Human Rights Commission.

The NWT Council for Persons with Disabilities strongly recommends that access to an independent arms-length advocate is absolutely necessary for there to be equitable access t the human rights complaint process, or any of the other follow-up activities such as adjudication. Consideration may be given to providing funding or training to one or more community groups to provide advocacy services. We would also like to see clearly in the legislation that complainant funding for legal services be provided for appeals to the Supreme Court.

Equitable access also requires Commission-funded travel and other costs for those who do not live in Yellowknife and may otherwise be hindered from laying complaints or following through with subsequent processes or accessing advocacy or other supports. I am talking about people who live outside of Yellowknife. We would like to see these suggested functions included in the legislation and, of course, adequate funding provided to fulfill such a mandate.

Membership on the Commission

It is the view of the council that an interest in and a sensitivity to human rights may be too vague a qualification for appointment to the Commission. We suggest that the Commission appointments be made on the basis of a person's knowledge and experience of human rights matters and issues. Further we recommend that the Commission be representative of the diversity of the NWT and groups that experience disadvantage such as persons with disabilities.

We suggest that a maximum be put on the length of time someone can serve on the Commission and that three terms of three years might be reasonable.

Director of Human Rights

In section 23(1) we suggest that the Human Rights Commission should hire or at least have a greater role in the hiring of the Director of Human Rights and possible Deputy Director than is currently indicated in the legislation. It may be wise to clarify throughout that the Director and possible Deputy Director carry out the responsibilities set out in this Act under the direction of the Commission.

In subsection (2), as with the Commissioners, while w are happy to see a specific qualification such as a legal background omitted, we believe interest and sensitivity are not adequate, and that expertise in the area of human rights is required for the Director. I would suggest that the same be true of the adjudicators – that a legal background not be a requirement. It may be that people want to have adjudicators that do, but I would like to see that not be a requirement in the Act.

We would suggest that there be a limitation on the number of reappointments of the Director. We suggest that in section 26(2) which discusses removal for cause that the recommendation of the Commission be added to recommendation of the Legislative Assembly in the removal of a Director or Deputy Director.

In the complaints section, Part 3, generally we have some concern about the Director being named specifically here in that section under duties and responsibilities. We acknowledge that these are considered quasi-judicial duties. However, we see the legislation as personalizing the role to perhaps a greater degree than is necessary. We wonder if in many cases it would be more appropriate to have the word "Director" replaced by the word "Commission". For example, in section 23(1): "The Commission may extend the time limit for filing of complaints…" rather than the Director. Perhaps this concern might be addressed alternatively if the Commission involvement in developing policies and procedures for the complaint and adjudication processes was more clearly identified.

Access to information about the Act. We have not found the summary of the provisions of this Act developed by the Department of Justice all that helpful in trying to inform our board or other people with disabilities about what is in the Act. There is much I think that we can all learn about plain language writing and about communicating to citizens about such an important issue as this Act.

We urge the government to ensure that plain language information and means other than print are used to the fullest extent possible for any revised versions or any other public information initiatives around this legislation.

Those are our comments on the proposed legislation. In closing, again we want to congratulate the government for moving forward on this. We urge the current Assembly to make this the most progressive human rights legislation in the country and ensure that it is passed before your term is up. I think we recognize, and maybe you do too, that passing this legislation is a very important step, but a first step, and we really look forward to working with the government in a thoughtful and adequately resourced implementation of the NWT Human Rights Act. Thank you very much for the opportunity to appear before you this evening, and I would be happy to try to answer any questions you might have.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman, it is clear that you have put a lot of time, effort and thought into this presentation, and we appreciate that. I will ask members of the committee if they have questions for you. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman, and I would also like to extend my appreciation to the association and Ms. Brockman for bringing forward these views. Early on in the presentation it was mentioned that disability is the most common cause or type of complaint or discrimination complaint laid before commissions. I do not know if I have that quite right.

MS. BROCKMAN: I am not sure that I have a whole lot of statistics, but it is my understanding that a third of the complaints before the Canadian Human Rights Commission are based on the grounds of disability. In Ontario and B.C. it is certainly the most commonly cited grounds for discrimination with regard particularly to employment related complaints.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Mr. Braden.

MR. BRADEN: Thank you. If disability is the most common complaint brought before a commission, are most of those complaints successfully resolved? What is the outcome of so many cases with a common cause? Are most of them solved in favour of the complainant? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Brockman.

MS. BROCKMAN: I cannot tell you the specific percentages of how many are resolved in favour of the complainant, but I can tell you that other human rights commissions in the country are spending a lot of their education and public awareness time and dollars on trying to educate employers and other people about their obligations to people with disabilities. Certainly the Canadian Human Rights Commission has a number of publications. Ontario as well has done a lot of work in that area because it is such an issue. Certainly there are cases I am aware of where people are winning their cases.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. I think, Mr. Braden, we could look for some of that information but it would obviously be difficult to decide whether or not something was in favour of the complainant when often times these things are mediated or settled and so forth. I do not know that it would be cut and dried, but if you are interested we could look for some of this information. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I don't know if there is a lot of value in pursuing the statistics or detail in this, but the message I am getting is that there is probably great value or greater value in spending money on resources in education and awareness so that complaints are avoided in the workplace, rather than trying to resolve them in an adjudicated way. Let's put the money up front so that people appreciate what a disability really is and what their obligations are to accommodate it. I think that is the message I am getting here. Have I got that right?

CHAIRMAN (Mr. Bell): Likely few would disagree with you. Ms. Brockman.

MS. BROCKMAN: I think that is reasonable, but I certainly wouldn't want to take that to the extension that we don't need a Human Rights Act and just do the information. I think the protections of the Act are a requirement and I welcome that.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Mr. Braden.

MR. BRADEN: Thank you. Ms Brockman mentioned or used the phrase several times of "perceived disability". Could you help me understand that a bit better, perhaps as a starting point. What is a perceived disability in relation to a hidden disability?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: Thank you. It is in the Act. The Act now has that terminology in the definitions, and we are happy to see that. Whether it stays in the definition section or under the grounds -- instead of just having disability, you have perceived, actual or predisposition to disability in the grounds. A perceived disability would be a disability that someone cannot see perhaps, or prove, but there is a perception that someone has a disability, whether they do or not. It may be that they do or not, but I think the issue is that someone could be discriminated against because I've heard or they have an HIV diagnosis, but a disability generally is accepted to be something that limits or causes some difficulty in the usual activity of daily living. If someone has HIV or someone with MS, but who is in remission, doesn't have any limitations today, then they might be a perception of a disability but they may or may not perceive themselves as having one -- but someone else might. I don't know if that helps at all.

I would suggest that probably definitions of disability are a fairly problematic area for everyone. It is not like being a woman, it is not like an age thing, it is not quite as black and white.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Mr. Dent.

MR. DENT: I think that as a committee we have had some discussions around the definition of disability and I think this is certainly something we are going to have to pursue with the department, whether or not they might be limiting the application of the Act with the extent they have gone to by listing some of the potential disabilities. Even though it says notwithstanding the generality of the foregoing, here are some that might qualify. It seems like it might be going a bit further than we need to. I am glad that Ms. Brockman brought that up, and will be something that we will certainly be following up with the department to quiz the Minister as to why they have chosen this approach. We will want to be assured that there was some thought that went into that listing. If we can demonstrate that there is some legal concern of limiting the application, we will be recommending a change for sure.

One thing I was interested in and that I wanted to get Ms. Brockman' to speak a little more about is in her presentation she talked about wanting to see a Bill of Rights included in the NWT Act. I suspect that we will hear more about this from other people, but since this is the first time anybody has brought it up to the committee I thought we should maybe ask Ms. Brockman to provide us with a bit of a definition as to what she means by a Bill of Rights.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Brockman.

MS. BROCKMAN: I think that if you look at the Yukon Act, which I didn't bring with me this evening, I think it provides an intent and a clear outline to people as to what the intent is and what it is that this legislation stands for, what are the entitlements. Perhaps it is somewhat value laden, but what are the entitlements that people in this jurisdiction have that everyone should have? I certainly admit that we haven't gone to the extent of coming up with a proposed wording or a proposal for you, but I think that the Yukon Bill of Rights in its introduction does go a bit further and does give a clearer indication of intent and perhaps inspiration for its citizens.

CHAIRMAN (Mr. Bell): Are we talking about some overall guiding principles at the beginning of the bill? Is this the kind of thing you would like to see laid out?

MS. BROCKMAN: Mmm-hmm.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: That was the only thing I was interested in knowing, so this is in the preamble to the bill, it is not actually part of the bill so it is nothing that is enforceable. Ms. Brockman may or may not be able to answer that. I am sure we can look into it and get some information on it. That is really what I was looking to find out and to get a sense of what sorts of rights are enumerated in there that Ms. Brockman thinks we should included in ours.

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: The Yukon one talks about association, for instance, as freedom of assembly and goes a little further around the right to freedom of religion and of conscience, freedom of expression right to enjoyment and disposition of property, those kinds of issues. We may or may not have the same here, the same ideas of what we want in it, but I think that gives people a good idea of what their rights are and their entitlements.

As well under the objects of the Act goes a bit further than the NWT Act's introduction.

CHAIRMAN (Mr. Bell): I think the Status of Women Council put forward a similar position, that the preamble include some of the things that -- I cannot remember what they were but they were outlined for us earlier. Maybe that is something you could take with you. I think we have a copy of their presentation, if you don't already have it, and you could take a look at that as well.

MS. BROCKMAN: Sure.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: I think that is all the questions I have for Ms. Brockman right now. I was just interested in what she was referring to as a Bill of Rights. I suspect we will hear about a Charter of Rights, Bill of Rights, that sort of thing, from other presenters and I wanted to try to gain some understanding of just precisely what she meant by that term.

CHAIRMAN (Mr. Bell): Thank you. Just for a point of clarification, I would note that it is not a requirement for adjudicators to be lawyers in the current proposal. It is an either or provision, either you be a lawyer or you have five years tribunal experience, etc. I think something like that. I am getting a nod, so I think that has already been incorporated.

I wanted to just you a bit about the definition of "disability". I understand that you have made a presentation on this to the government -- I think you have -- in the consultation stage as they brought forward the first version of the bill. I am assuming that it was you that presented on the definition of disability -- somebody did -- to the department. I think they feel that they have responded to this. If the concern was that the definition of disability included in the law be very broad and inclusive in its composition, their response has been that the definition of disability they are using is based on the broad Ontario definition so as to make it as inclusive as possible.

We did have a presenter in Inuvik refer to, I think, a presentation that you might have made at the weekend conference a couple of weekends ago. She had a copy of your proposal. At any rate she felt that the position was that she would like to see a more detailed definition, so there was a little confusion around that when we discussed it in Inuvik. I am glad that you have clarified that for us here. It seemed to make sense that it be -- I don't want to say more vague -- but less specific so that things are not automatically excluded.

I think that is about all of the questions that I had for you. One last thing I wanted to ask you about was this suggestion that past criminal conviction or criminal charge have a clear provision that it only apply if the past criminal circumstance is not relevant to the job in question. I know several jurisdictions have accommodated that. Wouldn't you say though that that can be a very subjective matter? Whether or not a past criminal conviction is relevant to a job is quite open for interpretation I would think. Is it enough to just suggest that? Ms. Brockman.

MS. BROCKMAN: That is a difficult one and I'm not a lawyer. I would suggest that there are going to be some calls on this and some legal case law probably established on that, as there has been on the duty to accommodate and what is undue hardship and a number of other things. I can see where to protect vulnerable individuals you may not want to hire someone who has been convicted of some particular offences, and I think we need to make sure that those protections are there. But there are a lot of jobs where it is not, and I think there would probably be -- your lawyers could tell you how to word this so that it works. I'm not a legislative drafter. I think they could probably find a way to do this, and over time obviously the obligation should be on the employer to make the case that it is a requirement.

CHAIRMAN (Mr. Bell): Thank you. Any other questions for Ms. Brockman? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. In your review of the drafts and the bill now before us, can you give us a sense of how accessible you think the process will be under the new Human Rights Commission. As outlined in the bill, is this something that is going to be easy and attainable for people to utilize?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Brockman.

MS. BROCKMAN: I think that it won't be very accessible unless, as we have suggested, there be an advocate and provisions for people who are complaining to have some support, especially for the more marginalized people who might be trying to access this. The fact that the Act will be written, that is already a barrier for a significant number of people who don't have literacy skills, even if you plain language it.

The intimidation factor of approaching any kind of sort of establishment is very high for some people; having to submit things in writing, having to tell your story more than two or three times. I think those are all barriers but I think they can be overcome, but I think there definitely needs to be provisions for people to have some advocacy support or supports in the process.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Do you see organizations like the one you represent, or other front-line advocacy groups, should they almost be mandated in the bill to be part of the delivery of this service to the public? Would your organization be willing to take that kind of task on, given that it was properly funded and resourced? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Brockman, any thoughts on this proposal?

MS. BROCKMAN: I would perhaps not name specific organizations in the bill because I think you don't want to date it or whatever. You do not want to be changing it all the time. I think that a provision to ensure that advocacy is provided and funded should be in the bill for people who require that kind of assistance in order to access the process, whether it be through a community based organization like ours, whether it is through legal aid, whatever. I think the advocacy route that they have access to should have some training and some abilities in this. Just ensuring that that is available and funded should be in the Act and then how it happens. It may change from time to time, it may be that one organization -- sort of an advocacy centre -- could do that kind of thing, or whether or not different organizations could help different people, whatever.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman, and you have clearly made that point in your submission so that we do see that here. Mr. Braden.

MR. BRADEN: Finally, Mr. Chairman, it has been suggested that with the enactment of this bill and the creation of a Human Rights Commission broader definitions there will be strong uptake, if you will, in interest. There may be a pent up demand for this kind of law and decision making power.

The council or the commission may be a pretty busy place early on as it gets up to speed and as people get used to it, understand how it works. Do you foresee a surge or a tide of interest, applications coming forward when this is created? Is there a bunch of new business that is just waiting for this bill to come into force? Thank you.

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: That is hard to say. I don't think the Northwest Territories is a society where that would be a preferred route to achieve an ends, but I think it may be tempting to a lot of people. There are a lot of cases around the country related to disability. Parents groups, children with autism, those kinds of things around education services, et cetera. Given the number of people who come to us looking for access to what they would consider a rightful service or program, for instance an equitable education for their children, that may happen.

That is really a difficult one. There are a whole lot of factors that would come into play as to whether there was or not. I would probably hesitate to take that sort of a wild guess. It is conceivable.

CHAIRMAN (Mr. Bell): Thank you. Are there any further questions? Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. In the presentation Ms. Brockman recommended that we look at putting in term limits for both the commissioner and the director. What is the reason why? Would you prefer to find someone like Ted Hughes, probably a little younger, to take on the director's position?

It is discrimination if you have to get rid of him after nine years, isn't that discrimination?

I mean, but if you find someone who is great at the job and well-respected by everybody why is the recommendation there for term limits for those positions? Ms. Brockman.

MS. BROCKMAN: I think there is a danger if someone has been there for a long time in getting too settled. For a lot of these kinds of positions there are terms, whether they are elected or appointed. We have not suggested that someone couldn't be reappointed, I guess. Nine years seems like quite a long time to us.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Mr. Dent.

MR. DENT: I think it is not only the commissioners, we are talking about people who are not sort of administrative experts, their purpose is much different than someone who is a director. Like an executive director position in many ways. I was just wondering why that recommendation was there. I can understand why some people would want to see perhaps the commissioner limited, I was a little surprised to hear the recommendation that there should be a limit on the number of reappointments. The number of times they can be reappointed was not stipulated for the director but it does seem to be...

I wasn't quite able to understand why that would be.

MS. BROCKMAN: You may get me rethinking that one given your comments about it. We will go back and reconsider.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Any further questions from the committee? If not I will thank you, Ms. Brockman for appearing here tonight before us. You know, I just skipped Ms. Peterson again. I keep forgetting that she has questions to ask and so I won't let you go quite yet. I will go to Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Ms. Brockman, the legislation provides for a commission composed of three to five individuals. Do you think that number and composition is satisfactory?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: Well it is not a subject that my board and I talked about in any depth.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Would it be fair to say that the position of commissioners is generally considered to be a full-time position? Is that how you and your board have envisioned those positions?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: I don't think that we actually talked about it in those terms. I think that people did not necessarily see them as full time, although the functions of education and such would not necessarily have to be if there was resources and other backup and staff, people to help out.

CHAIRMAN (Mr. Bell): Thank you, Ms. Brockman. Ms. Peterson.

MS. PETERSON: One of the things that the commission does have the ability to do under the act is to hire staff that they think is necessary to carry out the functions of the act. You and others have suggested the importance of a independent advocacy role. Do you think that the legislation as it is presently drafted which contemplates the hiring of staff should be more specific that that staff include an advocacy position?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: I am not sure if the advocacy position was part of the commission or a staff person. That it would be perceived as independent and at an arm's length. I think it may be preferable to see that capacity articulated in the act but maybe not necessarily as a staff position.

I know that WCB, the worker's advisor might be considered a staff position but I am not sure if it is. It is located outside of and it is contractual in nature but it is seen as somewhat more arm's length than one normally sees a staff position.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: So do I understand you to say that you would like to see the act make specific reference to an advocate for complainants but that that advocate would not otherwise be tied into the structure of the commission or the director or otherwise?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: Yes.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: The only other comment I was going to make is, I am interested in your comment or your thoughts on this. It is on the area of including past criminal convictions which are not related to the employment. I know you mentioned that might be quite subjective.

It would seem that some convicts or former convicts would really be in a difficult position if their convictions were for something like fraud or perjury which has an underpinning of dishonesty that they could always be discriminated against because honesty is something that most employers would want to see in their employees, whereas a property offence or something of that nature, those particular ex-convicts would not suffer from that same kind of situation. Do you see my dilemma with that?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: Yes, I do. Although I think that if it was a conviction around financials, that is stealing money as opposed to goods, if it was a job where one was not handling money I would see that it might be difficult to justify not hiring someone in that situation, would it not?

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: I guess the difficulty that I have is that even though they are not handling money the employer may not want to be robbed blind by them in terms of their supplies or their materials. I can see that being put as an objection. I am not trying to narrow that scope but I can see additional difficulties in that area with that caveat on not related to the employment than if it is kept to criminal convictions for which a pardon has been granted, because you can be pardoned for quite a variety of offences now.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. I think this is something that I am having a hard time getting my head around. I find it hard not to come up with a conviction that could not be said to be relevant to the job or work setting. Prior assaults, I think you could make the case that it is relevant to the job in question that staff and others should not be assaulted. You could almost go anywhere with this but it is something difficult to get your head around. Ms. Brockman.

MS. BROCKMAN: Well I do not have a lot more discussion about it. I guess so many people who have had contact with the criminal justice system that it is quite frightening. The prerequisites for gaining a pardon, is not time one of those, whatever the nature of the offence?

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: I think it is in combination of the nature of the offence and the lapse of a particular period which I believe is a year right now but it may be five years depending on the kind of offence it is.

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: See, I think for some people there are some barriers to getting pardons. If it is five years, that can be a long time of someone's life for some potentially minor offences. For some specific kinds of jobs where I think people would be willing to try to give people a chance. I am not suggesting that we have all the answers or that I would not be open to other suggestions or looking at this further.

I would certainly admit we have not had that opportunity as an organization to spend as much time on this as we might have. I do see your point. I must say that we find it really alarming, the number of people with disabilities, some particular kinds of disabilities who have had conflict with the law.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Just one final question, Ms. Brockman. We have the benefit of your experience, have you had an opportunity or has your board had the opportunity to consider the provisions on the duty to accommodate and are you satisfied with those provisions as they are written in the legislation?

CHAIRMAN (Mr. Bell): Ms. Brockman.

MS. BROCKMAN: At this point we have looked at them, yes, and no alarm bells have been raised or I would have raised them here. I must say that I have an element of nervousness about the degree of attention we have been able to give to the legislation and I know there has been, I would feel, adequate time. It is just our capacity as an organization to give it the attention we would like to. Thank you.

CHAIRMAN (Mr. Bell): Thank you. Seeing no other committee members with questions we thank you for coming out tonight, Ms. Brockman.

MS. BROCKMAN: Thank you for offering us this opportunity.

CHAIRMAN (Mr. Bell): It was our pleasure. We will recess until we have our next presenter at 9:00. Before we do that is there anyone else in the room who would like to address the committee?

UNIDENTIFIED SPEAKER: Well Mr. Chairman, I too would like to thank you for the opportunity to raise our issues and to be listened to, and for your thoughtful questions.

CHAIRMAN (Mr. Bell): Thank you. We will recess until 9:00.

-- BREAK

CHAIRMAN (Mr. Bell): We will come back to order with the recommencement of the Standing Committee on Social Programs public review of Bill 1, Human Rights Act. We have committee members Mrs. Groenewegen, Mr. Dent, Mr. Braden and I am Brendan Bell. Our committee staff Mr. Inch, Ms. Fenney and Ms. Peterson. Ms. Villebrun, I think we are set to hear from you. If you would like to, for the record to also introduce the gentlemen accompanying you here tonight and then you can begin your presentation.

MS. VILLEBRUN: My name is Noeline Villebrun and I represent the Yellowknife Tso'Tine Society. To my right is Lawrence Jean-Marie Beaulieu and he is the secretary treasurer for our society. On my left is Mark Cassaway who is originally from Roch River and is a member of our society.

CHAIRMAN (Mr. Bell): Welcome to all of you. Please begin when you are ready.

MS. VILLEBRUN: How would you like me to start? Why we are here?

CHAIRMAN (Mr. Bell): Certainly.

MS. VILLEBRUN: I will talk about our society, who we are and why we became this society.

CHAIRMAN (Mr. Bell): Okay, and I think specifically we are looking for your comments on the proposed human rights bills, how it might affect your society, concerns you have, things that you like about the bill. I think after your presentation on the bill you will probably have committee members possibly have some questions for you about your presentation. That is the format we have been using. Please proceed.

MS. VILLEBRUN: Our society was formed on October 27, 2000. The reason for this date was we had to meet a deadline of 5:00 to dispute the Treaty 8 boundary with the federal government and the Akaitcho chiefs and Treaty 11 Dogribs. We felt that our society would be able to address some of the concerns that are going on within the negotiations. We formed this society and we put in our letter of dispute and we got an acknowledgement from Minister Robert Nault.

One of the reasons, the main goals and objectives of the society is to research our history and our treaty. As a result of researching our history and our treaty we realized there were a lot of decisions that were being made for our people, especially the ones who were under the Roch River treaty. Our band, the Yellowknife Dene people signed the treaty in 1900.

What we want to do is show we did exist. Because of the current process, our people who are registered in different bands because of their relocation and the fact that all Dene children, status children had to be in school – they shut down Roch River and as a result moved all the children into Fort Resolution. From there, we do have that history.

The people from Roch River got amalgamated into different bands. One of the problems that our people are continuously coming up against is we are continually being told that we are not from the community, whether we live in Yellowknife or Fort Smith or Hay River or Fort Providence. The majority of our people are registered in Fort Resolution or Yellowknife wherever we were amalgamated into by the federal government.

For example, if one of our people wants to access a program, they tell us that we cannot because we do not live in the community and the community membership is first. But the act, we do have treaty rights to proper programs and services and the delivery of proper programs and services. As a result of this whole process of moving people away from Roch River and shutting down the community, our people have never gotten proper programs and services under our treaty.

So, we looked at that and in talking to -- I brought this out at the national level, the international level, I presented Yellowknife's case to the repertoire from the United Nations. I have brought this out to Matthew Coon-Come and his suggestion was to become a legal body. This is why we incorporated.

So, I am a little bit nervous. We have the history. Our treaty rights through this process, the territorial government handles a lot of our programs and services in the community and if we phone - not just for medical, it is also for education. If we phone and try to get dollars, whether it is for education, for medical, for let's say any funding that the government is putting out for First Nations, we are constantly told - and I have written numerous letters citing our treaty rights and stuff like this for different people and that is what we are always told that we don't live here in this community whether you are in Snowdrift or Fort Resolution or wherever. You do not live in this community so we cannot help you.

Or, if they do get somewhere there is no money in the budget left for our people. One of the things that our people are greatly impacted by, especially from Roch River, is they move people out and they promise houses. No one, I think just a few families through the federal program got houses.

If we try to access programs through Housing, for example, Lawrence was told steadily to move back to Fort Resolution if he wants to build a house. Well, Lawrence is a Treaty 8 member, this is his land base. According to our treaty and the history of our treaty, we were nomadic people. We did not stay in one place, we hunted all over. We had our camps.

Yellowknife here is an example. Yellowknife, they marked 100 years of traditional land use by the Yellowknife Tso'Tine people. Not the Yellowknife Dogribs that are here. That is another example of extinguishment of rights and misinterpretation of history and our treaty through this process. The GNWT is part of this process, the negotiations.

It is sad because a lot of people do not know our history and our treaty. This process is extinguishing our rights. So we thought, okay, we have to have an avenue. Where do we go to. We tried AFM and AFM said basically that it has to be dealt with at the local level. We are always told that it has to be dealt with at a local level.

When you talk about an act that you want to put forth, especially the North, this act is supposed to represent everybody and you see a section, Section 2 at the human rights conference that I was at a few weeks ago says that we do not have an avenue through this act because there are treaty rights? What if our treaty rights are being violated?

They talk about the Constitution, that this act does not supersede the Constitution, but what if our rights are being violated federally? Who do we go to? I do respect what the people were trying to do a couple of weeks ago by gathering and trying to get a policy that fits and meets everyone's needs. As I sat there, I realized it didn't meet the needs of the Tso'Tine people.

We do need an avenue. To be told that we may not have an avenue through this act is really sad for us. Hopefully out of this presentation and maybe more dialog with the right people we can turn things around for the people of Roch River. When our grandfathers signed the treaty in 1900 they meant well. I know that it is supposed to be done with good faith.

CHAIRMAN (Mr. Bell): Ms. Villebrun, I know this is very difficult for you but please take your time, as much time as you need to compose yourself and if you like, one thing I can do for you here is we can come back to you. I will ask Ms. Peterson, our legal advisor for some help in interpreting section 2, because you seem to have interpreted it to mean that you don't have protection under this Human Rights Act because you are party to a treaty. That is a different take than some other presenters who belong to First Nations as well, have had.

For instance, it says that nothing in the act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal and treaty rights of the aboriginal people of Canada. You feel that this says to you that you do not have an avenue. I think one of the presenters who came before us in Inuvik said that everyone in the North, regardless of whether or not they are a beneficiary has basic human rights. They are all protected and will all be protected through this legislation. All will be equal.

However, that will not reduce the treaty rights and aboriginal rights that are enshrined in our constitution, but that does not mean that people who are beneficiaries are not protected by this legislation. We believe they are. Maybe I can ask Ms. Peterson to speak to that a bit and that might give you a different take on this section. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I think you have summarized it quite well in a sense that individuals certainly are protected under the Human Rights Act and in addition to that protection as individuals against discrimination, constitutional aboriginal rights are respected.

What I understand your issue to be is that the act does not resolve, in your mind, the difficulty of non-recognition that the people from Roch River are experiencing with respect to the year 1900 treaty. Unfortunately, with respect to that issue you are right. The Human Rights Act does not advance your difficulty there. Treaty rights are dealt with almost exclusively at the federal sphere because of that fiduciary relationship between the federal government and aboriginal people.

I think that raising the concerns that you have raised in forums, opportunities you have available to you helps to bring attention to the particular issue that you are trying to resolve, and it is not something that I personally was familiar with before this evening so you are advancing the interests of the people you are trying to assist by doing so. I think you are right in terms of the act not being helpful to entrench your rights as an organization that you are trying to have entrenched.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. I think you are not the first presenter to come before us and suggest that people should be free from discrimination based on place of residency in the Northwest Territories, the example you gave earlier about the suggestion that if someone wanted to build a home they would have to move back to Fort Resolution and they would get help in that capacity, only if they did that.

Other people have talked about the need to not discriminate against residents of the Territories based on where they live, so that is consistent with what we have been hearing from other folks as well. Do you have anything further you would like to add for us, or any other sections of the act that you would like to discuss?

MS. VILLEBRUN: I guess another - I know I brought this up before but it is still very important. The people from Roch River are not getting the proper programs and services. Therefore, they do not get the proper medical attention. A lot of our people have gotten sick and a lot of our people have died.

They are always being told that you are not from this community so we cannot help you. That is discrimination.

I think another area that should really be looked at in this act is the political discrimination. Why I say that is because of a lot of people. We talk and we try to bring out these issues and we are discriminated against in our communities. I know I am in mine.

I have been trying since 1994 to continue working after I was hired to manage a construction company in Fort Resolution called Nuni Development Corporation. I am still being told I am not qualified after I went for training. I feel it is because I am a woman and it is a construction company. Not only that, when I went out for training, when I was hired by Nuni Development Corporation I was told to go out and get business management so I went out and I did it and I came back and the manager refused to hire me.

Every time an ad came out for that position I kept applying on it, but a lot of people who sit on the board of directors have a lot to do with committees and our leadership and that is how a lot of them control our committees.

You people do not realize, sitting here, how those committees are controlled by votes because the government recognizes the democratic vote and it is sad. Sometimes 50 votes will determine where a committee, a band, the community council, the Metis council, where it is going. Even in that there is nepotism. We face that in our community. I look at the history, and I can only speak for Fort Resolution. It goes right up the ladder from our community all the way up to the Premier. Conflict of interest. We still have that in our community. They may have taken the Premier down but I see a lot of blocks, I feel, coming from the government. It is sad because these people are supposed to be represented by these leaders, looking after our policies and delivering programs and services to First Nations.

The Government of the Northwest Territories looks at themselves as contractors to the federal government and that is one of the reasons why I am being told we do not fit here because of the federal jurisdiction. A contractor, in the real world, has responsibility too. That is the Government of the Northwest Territories. They are responsible for delivering proper programs and services to First Nations people.

CHAIRMAN (Mr. Bell): I think that some of the types of things that you are talking about, discrimination on the basis of employment, I think this act will provide a mechanism for those types of complaints to be brought forward. We are all hopeful that it will. I do not know if you have had a look at the prohibited grounds for discrimination, but I will read one of them to you.

"No person shall, on the basis of an individual's political belief, political association or family affiliation:

(a) refuse to employ or refuse to continue to employ the individual; or

(b) discriminate against the individual in regard to any employment or term and condition of employment."

You do have a lot of concerns that you have raised here about nepotism, cronyism, these kinds of things, and I think we are hopeful that this legislation will be able to deal with those kinds of things. There may be grey areas, of course, where the employer is a First Nations group, and I am not sure how the courts will look at these kinds of things. Ms. Peterson, maybe you can tell us if First Nations governments would fall in or out of this kind of - I know this is not black and white but maybe you could discuss some of the issues that the courts would have to look at in these situations.

MS. PETERSON: Generally speaking the federal government has jurisdiction on aboriginal matters and the federal Human Rights Act has some application, I would think, to activities of aboriginal governments or First Nations governments.

However, with an individual aboriginal person who had a complaint of discrimination, employment situations, based on gender, disability or any of the other prohibited grounds contained in this act, depending on the situation those kinds of complaints could be handled by this Human Rights Commission. There is going to be sort of a mixture of jurisdictions but the general rule of thumb is that human rights legislation is interpreted broadly and to be as inclusive as it can.

There are quite a number of potential avenues for remedies based on the prohibited grounds in the act. Failing that, there is also the Canadian Human Rights Act and the complaint process that is available there.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. I do not know if that helps to clarify it. Ms. Villebrun.

MS. VILLEBRUN: I know there is something before the courts regarding the Hay River Reserve, something to do with the union and federal jurisdiction but the thing is if your own people are oppressing you, then where do you go?

Why I say that again is, for example, the Roch River people. It was their tribe who signed the treaty in 1900. We had to meet four criteria set out by the government. Our own land base, our own language, our own culture, our own identity in order to sign any treaty in Canada. We had that. Today we do not have that. We have been amalgamated into different bands. It is really frustrating.

If I come here frustrated like this, and it is not just me, it is the people I am speaking for. There is an old man who passed away. He was 76 years old. He was living down in N'Dilo, Dettah. He was from our treaty. He lived in a cardboard shack because the Dogribs here did not like him. That is discrimination, but this is his land base. This is his treaty. These Dogribs who came here came here in the 50's when Yellowknife came about. Now we have one nation oppressing another one and you see the process. Part of it is misinformation.

How is this taking place? It is the people that are doing the research, and we have the proof. All the documents that we have been collecting over the years -- it is just conflicting with our own history and it boils down to we don't get proper programs and services. Someone said to me, " Noeline, it is really ironic how First Nations programs and services have been cut back in a lot of ways. A Metis have more rights up here than anyone from Roch River. A white person gets more programs and services than we do. Why is that?"

You see it. You see it because of the misinformation and misinterpretation of our history and our treaty, and it impacts and affects the whole nation. We signed a treaty nation to nation. There is no treaty signed with the Dogrib people within our nation. I see where this whole land boundary dispute and why the dispute is going on. This is the type of information that we have been trying to get out -- our history and our treaty. We really have no say because we are out-voted so how are we supposed to gain control back? It is pretty difficult.

CHAIRMAN (Mr. Bell): Ms. Villebrun, I know that this legislation, as Ms. Peterson has indicated, probably provides little comfort to you in the situation that you are facing, and I am very sorry for that. I do think that the advice of the AFN that you form a legal entity was probably the best advice that you could get, allowing you now to make, I guess, official interventions into some of these public processes so that you can make your case and be heard. I think that is important for you. I wish there was more that could be done here as far as this legislation is concerned. I think the important thing will be get the legislation passed and up and running so that if you do have concerns about discrimination that there is a mechanism and there is a body that you can bring your concerns forth to.

As Ms. Peterson has indicated, some of them will be outside the jurisdiction and some will be within, but I think this will go some distance towards helping to assure you that your rights won't be trampled on. I think maybe that that is probably about the best that we are going to be able to offer you here tonight. I know this has been very difficult for you to come here, and I do appreciate that. Maybe if I could ask if any members of the committee have any questions for you, if that would be alright?

MS. VILLEBRUN: Or if Lawrence or Mark would like to add anything.

CHAIRMAN (Mr. Bell): Okay. Why don't we just see if there are any questions form the committee, and if not I will ask Lawrence or Mark if they have anything that they would like to present. Committee members? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I appreciate very much your coming to tell us about your situation. Yes, it is frustrating to sit here and see what you are trying to achieve or what you are trying to recover, and in the particular box that we are working in tonight it seems that our ability to help is pretty limited. I wanted to ask a little bit more about what you are describing, Ms. Villebrun, about the denial or the refusal of benefits or services to individuals, if you will, from Roch River or wherever because of this residency problem. As the Chairman has already said, this has come up from other presenters too, and it is an area that I am quite interested in. I guess to try to give a fairly specific question – you have talked about housing, you have talked about health services, both of which our government, the territorial government, has some responsibility in delivering partially through programs of our own and in some cases on behalf of federal programs. I wanted to get a sense from you when you say that some services have been denied, were they denied by territorial government officers because of this residency problem?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Villebrun.

MS. VILLEBRUN: Do you want examples?

CHAIRMAN (Mr. Bell): Mr. Braden.

MR. BRADEN: Thank you. Not to the extent where we are naming names, either of people who are asking or officials who may be denied. Was somebody denied, for instance, a house? Was it a territorial government program that would otherwise have provided assistance but somebody said that the residency thing is a problem so you are out of luck? Did that kind of thing happen?

MS. VILLEBRUN: Oh yes.

CHAIRMAN (Mr. Bell): I think, Mr. Braden, these are the kinds of concerns we have heard raised before in the Standing Committee on Social Programs. You had a local housing organization making a decision on who gets public housing units, favouritism cannot come into play in certain situations, and those are an organization delivering programs on behalf of our government. I think these are the kinds of things that you are speaking of, Ms. Villebrun.

MS. VILLEBRUN: I have written some letters in the past on housing issues. A lot of it was that people didn't feel they were treated fairly, and a lot of it had to do with -- again if your family is in leadership then you get the houses that year or whatever. It is not equal opportunity. A lot of our people have talked about that. They wanted to be treated fairly and they wanted equal opportunity.

CHAIRMAN (Mr. Bell): Thank you. I am going to go to Mrs. Groenewegen because I believe that she has a question for you.

MRS. GROENEWEGEN: Thank you, Mr. Chairman. I hear what Noeline is saying and we have encountered it in our committee. What it is, it is like tribal politics at its worst. This whole discussion on human rights does bring to light the fact that yes there are certain areas we can look at as an universal kind of human rights policy, but for a number of years now we have heard the frustration of people who find it difficult to receive justice amongst their own people. How many times in the last year have we read newspaper articles where the chief is out of town and they get removed from office while they are gone, band members or members of development corporations, and they cannot get financial statements for years at a time, so the leadership is making decisions, and it is just like their rights are being violated. Then those kinds of decisions that we as a government devolve program delivery and service delivery to these emerging governments, but yet what does a person do who is a party to that who cannot fair treatment? I think this Act is silent on how that is going to happen. Maybe we are living in a dream if we think that there aren't going to be those kinds of issues within those associations of people within the various nations.

The draft document that is before us doesn't go any ways to addressing that at all. I don't know how we could extend it in order to be able to do that. But we do have a responsibility as government whereas we take, as Noeline said, the money from the feds, we get our money, then we devolve that money from delivery to people who act as agents for us, so to speak, and if those happen to be aboriginal governments who cannot seem to, on occasion, deliver those programs and services in a fair manner it is our problem. But as Noeline says, this doesn't address that. Once that money has gone out there, the accountability factor has kind of gone and we kind of just shut our minds off to it and say that that is sacred territory, we don't go there, that is aboriginal government, that is self determination, that I self-government, my goodness we cannot interfere in that.

I just wanted to tell you that I understand where you are coming from. I have seen lots of it and I relate to it. I just wondered, how many members do you have in your group that you refer to?

CHAIRMAN (Mr. Bell): Ms. Villebrun.

MS. VILLEBRUN: There are about 200 and it is getting bigger and bigger. Our people are starting to realize that it is true, we do have a treaty right, and we are not getting proper programs and services because of the leadership. As I said, the democratic process has a lot to do with it because the government recognizes the democratic process, self-government and Jane's rights. Since I left the North and I came back home, that community of Fort Resolution has a lot of problems with its committees and with its organizations, and it is not understanding that there is a process and the process is there for a reason. It is designed to be fair and to give people equal opportunity, but somebody is in leadership it doesn't matter any more.

This is where a lot of our people from Roch River feel that, especially now with the signing of this Treaty 8 and this boundary dispute. If we don't say anything, and we are not even on record, our grandchildren and our great grandchildren -- what is it going to take them a hundred years from now to try to reverse this decision because they found out 100 years later that yes the Yellowknives should have been recognized as a nation. Yes those people who are sitting there and negotiating are infringing on their rights and extinguishing their rights.

If we could fix it, why cannot we fix it today for our people? The James Bay Cree, for example, were relocated out of their community because of the dam. The same thing with Roch River people. We were relocated because of the development of the Taltson dam. With that, there were promises made to our people. One of them was free power. We still have not received free power. We still have not received the compensation from the Taltson dam, for example. These are the types of things that a lot of us feel, that this whole process is infringing on our rights, extinguishing our treaty rights and extinguishing our grandchildren's rights. I am not going to agree to that.

There was a treaty signed in Fort Smith in April and again because of the government process I was registered in Fort Smith when, if Roch River was going, I would have been registered in Roch River. I didn't agree to that whole process because I cannot agree to extinguishing my grandchildren's rights. But it didn't matter, it went ahead anyway. And that is what is going to happen here.

CHAIRMAN (Mr. Bell): Thank you, Ms. Villebrun. I do agree with Mrs. Groenewegen that if agents are providing programs or services on behalf of this government we do have a responsibility to make sure that it is being done in a fair and equitable manner, and that discriminatory practices aren't being engaged in. Despite the fact that you don't see that specifically maybe in this legislation I think it is a policy and certainly that is something that our government should be doing, and something that our MLAs should be ensuring is not happening.

Gentlemen, anything you would like to add before we wrap up tonight?

MR. CASSAWAY: Just to reiterate what Noeline has touched on. I feel I have one avenue to deal with the issue of my rights as a human and as a beneficiary of Treaty 8 that was signed in the 1900s. I am originally from Roch River. I grew up in Roch River. I was born in Fort Resolution because there was no hospital in Roch River. Until I started school, which was at the age of 6. At that time I was relocated and it seems like I was just moved out of there and moved into Fort Resolution. There were lots of social impacts that I suffered because of it. I had a rough childhood because I wasn't really at home. There were a lot of things I had to go through by being relocated from Roch River.

To this day I probably still feel the impacts of it. For example, programs and services, on land programs, hunting, fishing and trapping the way the Treaty was signed with my forefathers. I don't get even get close to doing any of those things any more. I still know how to. I was brought up by my grandfather and my dad in the bush and I can still do it, but because of residency clauses and stuff within the communities I am not able to do it. I am just wondering how this human rights legislation -- if there is any avenue in here for myself to be treated fairly as a human. Basically this is the one place left that I have to go. I don't have any other place to go. Once this has gone through -- once the treaties are signed that is it and if the Roch River people are left out then my grandchildren's children will have nothing -- but the way the treaty was signed I had a right when it was signed and now I don't.

It seems like we have just been pushed aside and forgotten, and I really feel that as a human being I do have rights and I shouldn't be treated like this. As a treaty beneficiary I still have rights and I shouldn't be treated like that by my people. So basically those are my thoughts and I would like to thank you for giving me the time to speak. I would like to thank Noeline for doing something for us, to give us one last chance perhaps.

CHAIRMAN (Mr. Bell): Thank you for your comments here tonight. Like other presenters we have heard, you are asking the basic question "what does this do for me?" I think it is very important that we are able to articulate that and discuss that with the people of the Northwest Territories because really at the end of this all that is what people are concerned about. They want to know how this provides an avenue for them to take up their cases of discrimination, and I think that is something we will try to provide some guidance on and we will certainly try to articulate. Thank you for your presentation. Anything from you, sir?

MR. BEAULIEU: No I would just like to thank everybody for listening to us. I didn't say anything. I think if I had to talk we might here all night. In March I was trying to apply for a house here and I went to meetings here for three days. I went to see the leaders. I couldn't get help from my leader or my chief, or the leaders from down here, the Treaty 8 leaders. So I turned to Charlie Furlong and Joe Rabesca, who backed me up. They said yes, don't worry about it, we will help him out. That is what they said in the meeting and then, I don't know they must have changed their mind.

After that I went back to their office and there they told me to look for a lot and we will give you a house. So I spent about a month looking for a lot and I couldn't find any. Not with the job I have, I couldn't pay for it. The cheapest lot I found was, I think, $89,000. This is supposed to be our land and they wanted me to go and buy land. How am I going to do that?

A Chipewyan down here where it is all Dene people -- the government gave us that name "Chipewyan". They took everything from us. Anything we ask for they always put -- I just went in a big circle -- there was Roger Allen and Tom Beaulieu. They said yes on the outside and then they wrote me back a letter and they told me to go see the elders down there. The elders form the Dogrib. Those are the guys that have been saying no to us for the last 50 years. Where do I go? I have nobody to turn to. Those things have to be stopped. That is all I have to say. Thanks for listening.

CHAIRMAN (Mr. Bell): Thank you, Mr. Beaulieu, and we hope that this legislation will give you an avenue to be heard so that you can make your case.

Thank you all for your presentations here tonight, especially Ms. Villebrun, I know that this was very difficult and something that is very close to your heart, but we appreciate hearing from you. Thank you. I know that the committee would like to thank you for taking the time to come out here this evening, and we wish you the best of luck.

MS. VILLEBRUN: I would just like to say thank you for allowing us to come and speak, and I hope this is just the beginning. Mahsi.

CHAIRMAN (Mr. Bell): Thank you, it was our pleasure. The committee will recess until tomorrow morning at 9:00 a.m. Thank you.

-- Recess

Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, Human Rights Act

September 12th, 2002

Yellowknife, Northwest Territories

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Witnesses:

Craig Haynes, Lawson Lundell

Aimee Clark, National Anti-Poverty Organization

Bill Erasmus, Dene National Chief

Zoe Raemer, OutNorth

Jerry Vandenbilche, OutNorth

Tammy Wotherspoon, OutNorth

John Fisher, Egale Canada

Bob Haywood, NWT Federation of Labour

Trudy Samuel, NWT Federation of Labour

Chief Sam Gargan, Deh Cho First Nations

Gerry Antoine, Deh Cho First Nations

Angela Norwegian, Deh Cho First Nations

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Ms. Kelly-Ann Fenney, Committee Researcher

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STANDING COMMITTEE ON SOCIAL PROGRAMS

Public Hearing on Bill 1, Human Rights Act

Yellowknife, Northwest Territories

September 12th, 2002

CHAIRMAN (Mr. Bell): We will come back to order. This is the Standing Committee on Social Programs and the public review of Bill 1, Human Rights Act. Before we get started today, I will ask Mr. Braden if he would lead us with a prayer.

-- Prayer

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. For the record today we have committee members Mr. Dent, Mr. Braden and I believe we are anticipating the arrival of Mrs. Groenewegen. I am Brendan Bell. Our committee staff -- Ms. Peterson, Ms. Fenney and committee clerk Mr. Inch. Mr. Haynes is here to present. If you could introduce yourself for the record and begin. The format we have been using is that you can make the presentation. I don't know if you have any written copy. If you do - you do. We have copies and we will distribute them. I think most likely committee members will have questions for you, if that is okay, at the end of your presentation. Please begin.

MR. HAYNES: Thank you, Chairman Bell, and members of the committee. My name is Craig Haynes and I am a lawyer with Lawson Lundell, a Yellowknife firm, which recently joined practice with Gullberg, Wiest, MacPherson and Kay. We are representing our firm today. My colleague, Mr. Paul Smith, has drafted this report along with myself. Unfortunately Mr. Smith sends his regrets and he also sends his best wishes. He cannot join us today. His duties as incoming president of the Canadian Bar Association, Northwest Territories branch, require him to be in Ottawa today. If it was not for those responsibilities of office, he would be with me at the table.

We approach this legislation from the perspective of placing it within the framework of what we call the Canadian family of human rights statutes. In recent years legislatures across Canada have harmonized their legislation where they deemed it appropriate, while at the same time they have included provisions which respect local values and traditions. We feel that Bill 1 is part of that family and follows that principle.

Harmonization generates predictability in the law. Predictability allows persons, businesses, other associations and a society in general to better comprehend their legal rights and responsibilities to one another anywhere in Canada. For example, this Legislature recently enacted legislation based on the principle of harmonization. That would be the Personal Property Securities Act, the Powers of Attorney Act and the Business Corporations Act.

Predictability and harmonization of rights and responsibilities, in our view, is particularly vital in human rights legislation. The courts deem human rights legislation as quasi-constitutional and in their rulings they seem to have a view of harmonizing the legislation where appropriate. We examined Bill 1 through the twin lenses of harmonization and predictability of societies and individuals rights and responsibilities under the law.

We warmly thank the committee for this opportunity to present our views today and through you I would like to commend your colleagues for introducing this legislation. This legislation is fundamental to the rights of citizens in this society, and ours is one of the last jurisdictions in Canada without it. With the introduction of Bill 1 I commend you, and through you your colleagues, for the important work that will bring clarity to the residents of the Northwest Territories, and also bring a timely addition to the laws of this jurisdiction.

In our discussion we limited it to six key sections of Bill 1. Those being the definition of the term "disability", the prohibited grounds of discrimination, the equal pay provisions, protection from harassment, the composition and qualifications of the commission and its members and the adjudication panel and its members. In our written brief we highlighted potential areas of concern for the government, we compared examples of similar provisions in other human rights legislation and provided our comments where we thought appropriate on ways in which the areas of concern highlighted in our paper could be addressed by changes to the legislation. Lastly, we also provided some comments on some miscellaneous issues in the legislation.

I plan today to address each of those six points in turn. If you have questions I will be happy to answer them during the presentation or if you wish to present your comments to me at the end of my submissions. I leave that choice to you.

I begin with the discussion on the term "disability". Bill 1, in our review, is quite similar to legislation in Ontario and British Columbia. However, Bill 1 defines disability more broadly than the other jurisdictions that we have studied. I will not read the section out to you, but here are three points of discussion for your consideration. You will find them at page 4 of your text.

1. The Legislative Assembly may wish to give consideration to the definition of disability. Since no such definition is exhaustive, the act of providing a partial list of physical disabilities, infirmities or disfigurements, and possible disabilities, might give rise to an argument on someone's case that in future new unanticipated ailments, although perhaps a disability in our minds, is not one under the law since it is not spoken to in this section.

2. Our second concern is with regards to the phrase "predisposition to developing". We think this phrase significantly expands the definition of disability compared to other jurisdictions in Canada. No other Canadian jurisdiction includes this wording in its human rights legislation. The adoption of this change to the definition of disability has been recommended by the Loffa Ray report in its examination two years ago of the Canadian Human Rights Act, but it remains unadopted by Parliament. We don't have the answer to the question of why Parliament has not adopted that provision, and that is something the Legislature may wish to turn its mind to if it hasn't already.

3. Finally it is the term "perceived". Perceived condition imports a subjective element into the analysis of disability. In the text it is not qualified as subjective, objective or otherwise. At the very least we think this make the determination of what might be a disability more complicated, so it would cloud the issue more than bring certainty because the definition is not based upon objective or other proof as it is written currently.

With respect to the prohibited grounds of discrimination, the four jurisdictions that include a list of prohibited grounds -- the four jurisdictions that we used were Ontario, Alberta, British Columbia and the Canadian Human Rights Act. We chose those four as they are the four largest and probably most litigated areas in Canada. If the legislation is similar to those areas, there will be predictability when someone appears before a tribunal. There will be case law upon which they can draw upon, as well the commission and the adjudication panel can draw upon those same decisions when rendering decisions and providing advice.

With respect to discrimination, the prohibited grounds in Bill, as I mentioned, closely resemble those of other legislation, but they include three extra grounds. The prohibited grounds under this legislation which do not appear in the Canadian legislation are ancestry, creed and social condition. Social condition in the legislation is defined as "the condition of inclusion of the individual, other than on a temporary basis, in a socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or any other similar circumstance."

We have three points of discussion which you can find on page 7 of your materials with respect to this.

1. The term "ancestry" is arguably subsumed within the definitions of "nationality" or "ethnic origin". As such, we submit that the term "ancestry" may be redundant under the proposed working of the legislation.

2. With respect to the term "creed", we believe it appears to be an outdated term. If it is included to prevent discrimination based on religious beliefs, then such discrimination is arguably caught under the term "religion" in the prohibited grounds of discrimination.

3. We have a question over the term "social condition". At present among the other Canadian jurisdictions only the Quebec Charter of Human Rights and Freedoms contains this term as a prohibited ground of discrimination. The adoption of this ground of disability as been recommended by the Loffa Ray report but has not yet been adopted. Other provincial jurisdictions have included a term in discrimination to prohibit on the grounds of "social of income", "lawful source of income" or "receipt of social assistance".

It is our question to the committee -- if the goal is to provide protection for those with low income let's be positive and let's use a phrase that is similar to "source of income", "lawful source of income" or "receipt of social assistance". That way the tribunal can look at other case law to determine what the ground rules are, and as well a complainant can look to other jurisdictions to see how it has been interpreted so when they go before our tribunal for the first time they have an idea of what the tribunal and the panel may rule. If there are other phraseology and other conditions which want to be protected under that term, we believe that is a term that should have a healthy discussion before this committee and in the Legislature.

Our concern is that it is not defined anywhere except in Quebec, which leaves this tribunal with no other case law or decision making to rely on. It doesn't allow a complainant to review other legislation to determine the strength of their case.

Our third issue is with regard to equal pay. The equal pay provisions in Bill 1 are similar to Ontario, British Columbia and Alberta, but again it expands the scope of what is contained in those three legislations. As you see on page 8 our point is that the protection under the equal pay provisions is larger than the comparable legislation since it bars lower pay based on any prohibited ground of discrimination rather than just based on gender or sex.

With harassment, I will turn you to page 10 and our comments. Ontario and the Canadian Human Rights Code include provisions with respect to harassment. The statutes in British Columbia and Albert, however, do not. We commend the Northwest Territories legislation for including this term.

What we suggest to the committee, and through you to your colleagues, is that you consider whether the specific wording that exists in section 14(2) of the Canadian Human Rights Act should be included. Section 14(2) of the Canadian Human Rights Act explicitly finds sexual harassment as a prohibited ground of discrimination in the work place. That is not in our current text. It could be implied in the current text, but there are statutes elsewhere that make it explicit and we would put that suggestion through to you and to your colleagues for consideration in making sexual harassment an explicit term of discrimination, so someone who is suffering sexual harassment in the work place can have a remedy under this Act.

With respect to the composition of the commission and adjudication panel, we have a few remarks. The commission proposed in Bill 1 is largely similar to provisions contained in other human rights legislation that we have studied. The Queen's Representative under Bill 1, on the advice of the legislative branch, would appoint commissioners, but Bill 1 proposes two significant differences from the other statutes in Canada. First of all, all members of the legislative branch would participate in the selection of commissioners. In other words, all Members of the Legislative Assembly. That is a unique difference and it is also a difference which we feel could operate here considering the intimate setting that we have in the sense of collaborative government that we have.

This decision would be made by all Members, it seems from our reading of the legislation, rather than just Cabinet. If that is the case, the wording -- if it is meant to be only Cabinet -- would need to be amended to make that clear. In other jurisdictions Cabinet is the only group that makes this recommendation, as we all know, but the Northwest Territories is different from other jurisdictions in how we are governed.

Secondly the legislation enshrines the commission members' qualifications in law. That is not done in a number of other jurisdictions, as you will see in my presentation. Bill 1 distinguishes itself from other Canadian legislation in that it does have those basic qualifications, and we think it is reasonable to have that in the statute. It does allow everyone who reads the law to understand why the commissioners are there and why the legislative committee appointed them.

With respect to the adjudication panel, again it is similar to other jurisdictions that we have studied so the theme of harmonization, stability and predictability is preserved. Like other jurisdictions, the Queen's Representative, on the advice in this case of the Legislative Assembly instead of Cabinet, would appoint the panel members. Again it describes what qualifications the panel members must have. In that respect it is similar to the federal Act. The federal Act provides minimum requirements for members to serve on the adjudication panel. In Canada the chair and the vice-chair must be lawyers with at least 10 years membership in good standing in a provincial bar.

Bill 1 does not require a lawyer to serve as chair of the adjudication panel, but it does allow individuals who are called to the bar with five years to serve as chair, or individuals with five years experience on an administrative tribunal. We applaud this section. We think it is very insightful of the committee to allow people to serve on the adjudication panel and to serve as chair who are not necessarily lawyers. Lawyers do not have a monopoly on how practice works with respect to human rights. I commend you for taking that bold step.

But with respect we do have some comments on the adjudication panel and the commission. Some of them are procedural in nature, and you will find those comments at page 15 and 16 of my remarks.

Bill 1 does not provide detailed provisions as to how the operation and internal administration of the commission or adjudication panel will work. We put forward some issues for you consideration. While they may not be included in the statute, you may wish to consider them while drafting policies or regulations which will govern these two bodies.

The first issue is how much funding the commission requires to implement its mandate. We raise this issue because this is now becoming an evolving topic in Canadian law. There is recent case law on human rights where an individual raised a complaint to the B.C. Human Rights Commission stating that the commission took too long to hear his case and as a result his Charter rights to freedom were violated. The Supreme Court found that his rights weren't violated and that three years was not an unduly long period of time, but that decision may change.

Our suggestion is that when you operate this body make sure that it has the funds to hear all the cases appropriately or you may be subject to Charter scrutiny.

The second issue is tied to delay, and that is how many staff will the commission have to investigate items in a timely manner. This body can do great work, and it has in other jurisdictions. I think it would be a welcome addition to our jurisdiction, but we emphasize that the commission must have enough investigators to complete its work on time and in an effective manner. Our concern is that if the work is not completed effectively, individuals may lose confidence in this very institution which could help them. We would not want to see that come to pass.

Our third point is with respect to the commission's independence from the Government of the Northwest Territories. We ask the Legislature to consider whether the commission should share employees with the Government of the Northwest Territories departments or other agencies. It would be our preference that they do not. That way there is the appearance and actuality of impartiality and independence. Our concern is that the Government of the Northwest Territories being a large employer in this area may be subject to several complaints before the commission. As such, the Legislature should ensure that the government is not involved in the same decision making as it is being subject to.

Our fourth point concerning these issues is whether legal counsel who advises the commission and adjudication panel itself should be independent from the GNWT. Our concern is that if you have government lawyers who are working most of their time with the Government of the Northwest Territories and then come over and work for the commission there could be allegations of bas and you could look through the case law that is developed on bias and administrative tribunals and see what those guidelines are in other jurisdictions and how it has been decided by the Supreme Court of Canada and others. I am not going to go into a lengthy analysis on that point, but again our concern is preserve the independence and impartiality of the legal advice that the commission and tribunal will receive, especially when allegations against the Government of the Northwest Territories are brought before it.

The other question we put forward again is whether the adjudication panel should have a lawyer serve as its chairperson. That is a question which might want to be addressed. It is of concern to some members of the legal profession. As we mentioned before, we commend the legislation for allowing individuals with experience to serve and that is the primary concern. If someone will serve as chair of the adjudication panel, whether they are a lawyer or not, that individual should have an intimate familiarity with the rules of evidence, procedure of the law -- you can garner that information from being involved in a number of different organizations in this territory, but the chair must have those rules familiar to him or her. Those are the rulings which the panel chair will be making a decision on in a hearing, and in order to preserve the legitimacy of the hearing we should ensure that that person has a familiarity with those rules.

Be that a lawyer which would be the case in their practice or someone else we will leave that to you, but we do put that consideration forward to you -- whether that person should be a lawyer -- and that question might want to be addressed in your final report.

The next question is with respect to the security of tenure of the members of the adjudication panel. We are particularly concerned about the panel more so than the commission. The commission will be making recommendations about what cases will proceed and how to solve those mattes, but the adjudication panel will be ruling on the very body that appoints them. Since all Members of the Legislative Assembly will be appointing the adjudication panel, we believe there should be some separation between the two groups. For example, the panel might be called upon to make decisions on the Government of the Northwest Territories. There might be a public perception, either right or wrong, that individuals whose terms are similar to Members of Parliament who appoint them, may be less inclined to make rulings against the government, or bite the hand that feeds them. As such, we suggest a term of five or seven years. In other words there would be an overlap between the adjudication panel members and the individuals who appoint them -- or the sitting that appoints them and if Members are re-elected that is often the case -- then those individuals would be subject to review by the same people who appoint them, but it is different session.

The other comment we have on the adjudication panel is whether part-time rosters should be established. For example, we live in a small territory. A panellist may be unable to hear a case because of familiarity with the facts or may have represented them in a previous career, so we suggest that there should be a number of adjudication panellists, either all full-time or several part-time, who could step in and hear cases where everyone else is conflicted out. In the legal community there are some cases, for example, which cannot be heard before particular judges because of their familiarity with the case. The same thing could happen to the adjudication panel. Our concern is that if all the panellists are conflicted out we grind to a halt.

I am sure this issue has been on your minds before and that is something we would like to commend to you to be addressed.

The final concern I will raise with you today is whether the adjudication panel should publish its policy guidelines. At present when the panel starts they will not have a series of decisions that individuals can look to for guidance before they argue their case. The Workers' Compensation panel publishes its guidelines and how it may interpret particular facts. The policy guidelines are not binding, but it gives an indicator of how the commission may rule. The Legislative Assembly may wish to put in regulation the power for the tribunal to do the same so that way it breeds some certainly into people's decisions. In other words, if someone looks at a policy decision and realizes that the commission may not find in their favour, they may not bring the matter before the commission. That saves everyone's time and it also saves taxpayers' dollars. It also allows less delay in other cases being heard.

Again we are just making some suggestions to bring some certainty to the panel's operation.

We also have one question that we don't have an answer to and we are also not implying one with regard to section 4, and it is on page 16 of my remarks. Section 4 of Bill 1 states that the Act binds the Government of the Northwest Territories, but no mention is made of aboriginal governments being bound by the legislation except for section 3, I believe, which mentions preserving the rights that are established in the Constitution Act. There might, we would suggest, perhaps whether aboriginal governments would be bound by this legislation should be mentioned by the committee or by the legislation because this issue might come up as a point of litigation later. If the Legislature has turned its mind to it, our suggestion is just to make that point clear. We don't have an opinion one way or the other. We just again would like to bring some certainty in order to reduce potential litigation and interpretative problems later on.

Finally we have a couple of suggestions for amendments, located under Discussion 10 on page 16. There was a recent Supreme Court of Canada decision respecting firefighters in British Columbia where the distinction between direct and adverse affect of discrimination was eliminated in Canadian law. This legislation, sections 7(5), 8(3), 10(2), 11(2) and 12(2), still contain this distinction. Our suggestion is that since the Supreme Court of Canada has ruled that this distinction does not apply we keep our legislation harmonized with that point. If we do not harmonize the legislation it sends the signal that that Supreme Court of Canada decision doesn't apply in this jurisdiction and will be arguing this nuance between adverse affect and direct affect discrimination when we think the Supreme Court of Canada decision, and other jurisdictions who are following it, will provide a case law which will help everyone through harmonization and certainty to argue their cases.

Those are my submissions for the committee today. We have provided an executive summary on pages 18 onward in our text which brings up the points we would like to discuss. The other points in our text review the other jurisdictions we reviewed -- Alberta, Ontario, British Columbia and the Canadian Human Rights Act. You can glance through that at your leisure. At this time I will be happy to answer any questions you may have for me on my presentation or other issues.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes, a very interesting and educational presentation. We appreciate it. I will ask committee members if they have any questions for you. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I think it is interesting. Members have been wrestling with the definition of "social condition", and I am sure Mr. Haynes will understand what it is we are trying to achieve with that wording in the Act. In his presentation it almost sounds like we would be achieving the same thing and probably making it more certain if we were to follow the wording in other acts. I guess our concern was that perhaps just source of income might not cover everything for somebody whose social condition -- yes they may have low income or they may get their income from income support but that may not be the only way that their social condition is defined. That is what we are wrestling with -- how to properly define what we are trying to get to. It is interesting to hear Mr. Haynes talk about the issue of precedent and how that might be used to help in the application of our law. But surely he must agree that not everything that we might be trying to encompass in social condition would be found by using the wording of "source of income" or "on social assistance" which is typically what the wording is in other jurisdictions.

Has he thought about whether or not there is some way to put the two together so that we can provide that same sort of certainty, and yet broaden the definition a bit, which is what we are trying to do.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman, and thank you, Mr. Dent, for your question. The crux of our response to the report was looking at other jurisdictions to bring certainty for those who appear before it. There are a number of points that are raised in the draft Bill 1 with respect to social condition. We have read the Lcffa Ray report. We are not certain if that is what the Legislature was using as its template, or if it had other points in mind.

To answer your question, we are not completely certain of all the points you are trying to achieve so I cannot answer your question today, but I would be happy to go back to my firm if you could give us an idea beyond the Loffa Ray report or your other background reports and see if we can craft something together.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Mr. Dent.

MR. DENT: I guess it would be difficult to enumerate all the things, but I think Loffa Ray recognized that just because someone is on income support -- that may be one indicator of coming from a social condition that puts them in a low income group that people may discriminate against because of their income. For instance a landlord may say that someone who is low income is not somebody that they are interested in having as a tenant. Their income may not be low enough to be on income support, but somebody who is working in one of the retail operations, is a single parent and has four kids may, in fact, qualify for membership in that low income group that may be subject to discrimination because a landlord is going to look at them and say, "This person is barely scraping by and I am going to have problems with them." Or think that they are liable to have problems with them. We want to make sure that those people are covered. That is sort of why we were looking at broadening the definition, rather than just sticking with the ones that are found in other jurisdictions.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman, and thank you, Mr. Dent. Based on those comments, you could include a term that not necessarily respects low income but you may want to have a term such as "net source of income" if you want to move away from social assistance and move into the working poor. You might want to look at a term such as "poverty" and then the adjudication panel when it puts out its policies, if it wishes to do that, could state that we look at poverty as it could be between this income and this income based on the statistics of what the medium income is in Canada.

The way the legislation is there it is addressing more issues than just the poverty question. There are issues of illiteracy and others, and we are just not certain if the term "social condition" is appropriate since no other jurisdiction, with the exception of the Charter of Human Rights and Freedoms in Quebec, has adopted it. We are just not persuaded on what it would be interpreted as being. We understand the Legislature's conundrum and we share that with you. How do you provide protection for individuals who are working poor or are simply receiving social assistance, or do not have an independent source of income, who are being discriminated against by landlords or others.

Based on what we have seen, our question is whether social condition is the appropriate term to do that. We are just not persuaded yet. We are not closing our mind to the term, Mr. Dent, it is a question of what other options are out there.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman, I appreciate Mr. Haynes' comments. As I said, this is something that the committee has been wrestling with and we are going to have, I know, a considerable amount of discussion in trying to work our way around what we finally recommend back to the Legislature on this issue. I just wanted one last comment. I appreciate also Mr. Haynes' comments on sexual harassment. We have had submissions that have recommended that the committee take a look at the harassment issue and strengthen the bill, so I appreciate Mr. Haynes' recommendation on how we could do that. I think we will have to take that into consideration. I find that part particularly helpful, that he has given us a concrete manner in which we might achieve it. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. My appreciation too for the effort that you have put into this presentation. It is most helpful. I am wondering whether Lawson Lundell or just the legal fraternity anticipate that there is going to be a tidal wave of action and uptake on this once this new bill comes into force. Do you have a sense that there is a lot of cases in the wings waiting for this to take effect and enable a bunch of new action to happen?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Bell. Mr. Braden, it is hard to anticipate what the volume of litigation may be, but I don't think it is unreasonable to say that whenever you have new legislation there is always someone that wants a test case. That makes sense. I am in favour of test cases. You have a term you don't understand, let's litigate and find out what it means. Better yet, if you can solve it between yourselves without going to litigation, that is better, but there are always groups in society who, like myself, want to know what terms mean. You will find a test case and you will argue it through just to bring some certainty for others in society as to what a term means.

For example, a term X in the legislation could be brought before the adjudication panel and the panel makes a ruling. The Legislature then turns around and says, "My goodness that is not what we meant at all, we should amend our legislation." That could happen. I cannot foresee the volume of litigation but I would foresee that there will be definitely some litigation to find out exactly what these terms mean. For that reason we were bringing comparative analysis from other jurisdictions to try to bring some harmonization to this jurisdiction, or bring that argument forward for your consideration. With harmonization, test groups can look at other jurisdictions, find out what the terms mean and it is likely that the adjudication panel here would adopt similar terms – and the Legislature knows what they mean.

The law should only be there as a last resort. Litigation is there as a last resort. The more certainty you bring, the lower the volume of your cases will be because they will be resolved through the dispute resolutions you have incorporated into your statute -- at least that is my hope.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Yes that is the kind of assistance I am looking for, trying to see beyond actual passage of the bill and implementation. You also make a very good point about resourcing this commission adequately. If there is going to be a big pulse of cases right up front, staffing up and getting down to business at the same time as you are handling a whole bunch of new processes and new people, it is going to be a challenge. I am just trying to get a sense of how much of a challenge it is going to be.

Mr. Chairman, perhaps related to that is the aspect of accessibility of , say, the average person or perhaps the person who is disadvantaged in the sense of literacy skills or their ability to just cope with these kinds of things, who may feel they have been wronged, but then they take a look at this and they don't know where to start.

We have heard from a couple of other presenters that they feel that establishing say an advocate or an independent counsel so that people would have somebody who would take them through the process, help them get a footing and get access to the law, is a significant step. I believe that is not something that is included in this bill right now. Do you think that we should be looking at establishing some kind of officer to help bridge the complexity of this Act for citizens?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman, and Mr. Braden. I share your concerns. Whenever there is new legislation, especially something as vital as this legislation, and something that is going to be quasi-constitutional, you are going need to ensure accessibility to it -- that people can know their rights, determine what they are in advance, determine whether they should be bringing a complaint forward, determining whether there is dispute resolution processes available to them. In that respect we suggest there should be a communications package put together to explain exactly what this legislation is. Whether that is done by the commission or whether that is done by the government, it has to be done. This is new fundamental legislation. This is legislation moving us away from a fair practices officer then up through to the 21st century of what human rights is all about. The rights need to be explained. Someone is going to have to do that role.

I also believe that you are going to see -- I would like to see -- independent groups looking at ways of channelling people in this legislation, whether it be the Federation of Labour or the Women's Centres, for example, or it could just be through the Inuvialuit Development Corporation helping their individuals., or it could be the GEC. As members of our society we should be making this legislation accessible to everyone. That aside, and the law profession has that obligation as well -- right now we have not only legal aid but we provide evening services through the Law Line. Perhaps something along that should be funded by the government where individuals can call and volunteers who are educated by the commission can go ahead and present. I know that is something I will be interested in serving on. I think we all have an obligation -- those of us who know what this means -- to provide complimentary advice.

Whether you need an ombudsman or a workers' advocate as Mr. Dent and I mentioned earlier, is a good question. I have not determined in my mind how effective those operations are, but if studies in other jurisdictions or one that is conducted here demonstrate there is going to be a need and those services are going to be used, and how those services should be funded and operated, by all means let's have an organization, at least in the initial stages of this legislation, that helps people understand what their rights are.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Mr. Braden, anything further on this?

MR. BRADEN: No, thank you, Mr. Chairman, not right now.

CHAIRMAN (Mr. Bell): I do have several questions for you. Maybe I will start with a couple of points starting from the back. In the area of operation and internal administration, you are right, this doesn't show up in the legislation as it currently exists and I think it is contemplated that these policy decisions will be made internally. I think you make a very good point that these things should be published. People should know the rules of engagement, I guess.

The one thing that I think possibly has been a problem, and you are not the first that makes me think this, is when you refer to the adjudication panel and you pose the question whether or not a part-time roster should be available in case all members are not available to hear a complaint. I think if you look at section 51 that speaks to the adjudicator it says that: "The chairperson of the adjudication panel shall designate any member of the adjudication panel, including the chairperson, (a) on the referral of a complaint to the adjudication panel, to adjudicate the complaint." So it looks, at least as far as this legislation is concerned, that one member would hear each complaint. I suppose that certainly can be up for debate, but that seems to be the way the legislation looks at it at this point. I don't mean that the issue of part-time roster members wouldn't be necessary, but it certainly I think speaks to the fact that we wouldn't require the entire panel to be available for each complaint. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman. We are aware of section 51 but we just wanted to bring up the fact that it depends on how many commissioners the Legislative Assembly appoints. If it appoints only two, three or five, what happens if all those individuals have a background which may remove them. We are looking at contingencies. We realize that the Legislature in its wisdom will have that fact considered and you will have people appointed from different parts of the region with different backgrounds. We simply raise the issue as a point of concern as we do have that issue currently on our Bench.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. I wanted to ask you also about discussion point 7 on page 8. You talk about the protection offered under our equal pay provisions being larger than comparable other jurisdictions. Does this pose a concern for you, or are you suggesting that that is a good thing?

MR. HAYNES: Thank you, Mr. Chairman. We are simply pointing that out because we do know that equal pay is an issue. It has been discussed at different public meetings. While going through our analysis we raised that point. From our point of view, whether it is on other issues or gender, as long as it doesn't make that much of a difference to us -- that meaning that as long as individuals have all the protections available to them so they are not discriminated against for equal pay, that is fine with us.

CHAIRMAN (Mr. Bell): Okay, thank you. I appreciate your comments on social condition. This is something difficult, as Mr. Dent has indicated we will wrestle with and try to make it as comprehensive as possible, but I think you make a good point that if there is not case law or much of it -- save for Quebec that speaks to social condition -- we may run into a problem with precedent and guidance.

I wanted to take you now if I could to the first comments you made about the definition of "disability". You are saying exactly the same thing that the Council of People with Disabilities was saying yesterday in that if you cannot compose an exhaustive list maybe it is better to not have a list, because maybe if you are not in then maybe you are out. I would say that certainly this is a point that we have heard before.

I think I would have a better idea if I could get my head around some examples, but I think you talked about predisposition to developing and were questioning in what scenarios that might be used. I think we are also having the same questions. Have you any idea how predisposition to developing a disability -- why it would be in here and how it has been contemplated? Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman. Our concerns over predisposition to developing is that we don't know where to look for the law. We see it in the Loffa Ray report, and I see that that report speaks to genetic discrimination. That with the human gene know-how discovered and being quantified, that could be a pressing issue in the future. For example, will an insurance company refuse to give you coverage if your genes show that you may have a possibility of developing disease X in the future even though you don't have it now. That is what the Loffa Ray report is speaking to. The question is, since this term does not exist in any other legislation it provide us with a conundrum. We do not know what it will be interpreted to mean.

One point to consider through the committee is why the Canadian Government has not implemented that term. They received this report from Justice Loffa Ray two years ago and they have not put forward a proposal to amend the Canadian Human Rights Act. Why not?

We are suggesting that this question should be put to further study and explained so there is certainty as to what it means or what the Legislature intends it to mean, so that way when the tribunal comes forward they could determine what predisposition means. Does predisposition mean science? Does predisposition mean psychology? Does it mean social science? I don't know because it hasn't been determined in other legislation and we have only seen it in the Loffa Ray report, and that report isn't binding on an adjudication panel.

CHAIRMAN (Mr. Bell): Okay, thank you. Let me ask you about, and maybe you are familiar with case law in this area, the term "perceived". For example, I am an employer and I perceive that a potential employee has a disability, rightly or wrongly. In case law is that essentially tantamount to disability? Have the courts interpreted that as being a disability because of the perception of the employer? Are you aware of case law in this area, Mr. Haynes?

MR. HAYNES: Thank you, Mr. Chairman. My understanding of the case law is that they look at whether an employer's conduct is no longer direct or adverse impact. The question is, was there actual discrimination based on a particular law? Did discrimination happen? I am not personally familiar with the term "perceived" and I do not see it in other Canadian legislation. Our concern again comes down to what does it mean in this legislation. If it is perceived, who perceives it? Is it perceived by an employer? If an employer perceives an employee to have a particular characteristic or enumerated ground? Does that constitute discrimination? Is it the employee perceiving that he or she is being discriminated against by an employer? Is it a third party who perceives discrimination takes place? For example, the commission can initiate a complaint on its own, so that is a third party. Can the commission just go about and say, "I perceive something is happening here so I call it discrimination"? It is the test that concerns us particularly.

If it is perceived by -- and that is put into the legislation -- and we may have less concern about having that term there, but as it stands now there isn't a test that someone can look to. That is our concern.

CHAIRMAN (Mr. Bell): What about a further example. If I am an employee and I perceive that my arm doesn't work and therefore I say to my employer, "I can't do this, I can't perform these duties" -- or for whatever reason I should be able to have certain accommodations made for me at work, despite the lack of medical evidence. Could this be problematic for an employer? What would an employer, I guess, in that situation do? Is this another scenario that might be envisioned? Mr. Haynes.

MR. HAYNES: Mr. Chairman, I would suggest that it is not what the employer or the employee perceives, it is maybe what the adjudication panel perceives in that case. If there isn't science or medicine to back up the claim and goes to the adjudication panel, what is the adjudication panel going to use as evidence? That is our concern.

CHAIRMAN (Mr. Bell): I guess the important point, as you have indicated, is that we have a test and perception is the find. Thank you for that, Mr. Haynes. I will ask Ms. Peterson or Mr. Fenney if they have any questions. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman, just a couple of questions. Mr. Haynes, there has been some discussion around access to the commission and tribunal and that in order for a human rights commission to be effective it has to be accessible to individuals. The model proposed in this legislation is a complaints based model as opposed to a proactive model, and there is nothing in the legislation per se apart from the commission having the capacity to carry complaints that eases the issue of access by individuals. Do you see any mechanisms, either that should be in this legislation or otherwise, that would provide some comfort on the access issue?

CHAIRMAN (Mr. Bell): Mr. Haynes.

MR. HAYNES: Thank you, Chairman Bell, and thank you, Ms. Peterson. Indeed the issue you raise is a live one. What is the point of having legislation if no one can access it? It is the reason why we have legal aid. The question I would pose is, what is the role of the commission itself? The commission will, we trust, be an independent and impartial body separate from the GNWT and any other entity except for funding. The commission in other jurisdictions has the capacity to not only resolve complaints but also promote good human rights practices. Perhaps the promotion role would include explaining what practices are problematic and which ones are not. Perhaps that promotion role could incorporate training individuals in society to be responsible in their work place. Perhaps that could include training other groups in civil society about how to counsel their members.

Alternatively, the commission could receive perhaps funding from the government and that funding would then go to groups in civil society to create their own programming in the same way as when the Charter came into effect there was a Charter challenges program. Perhaps there could be seed money available to help individuals who are outside the scope of government. The question is, if I have a complaint who do I trust? Who will I turn to to share my concern in a confidential manner? Will I go to the commission, the same individuals who might receive this information and then commence a complaint on their own? Would I feel more comfortable going to a group which I am already familiar with or am a part of?

Without further study, I am not providing any answers for you, but I am sure these issues have been tackled elsewhere in Canada and if not in Canada somewhere in our global community we could find those studies and determine our best practices from lessons learned, and put those into effect.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. On the issue of perceived disabilities and predisposition to developing disabilities, I appreciate your comments on those. Those are both difficult areas. Can I pose to you a couple of situations and ask you whether you feel that these might be, based on your view of them, the kind of thing that the legislation is trying to encapsulate?

With predisposition to developing a disability, if we could envision for a moment a person who has been diagnosed HIV-positive but is not experiencing AIDS, is there a possibility that there would be discrimination based on predisposition in the mind of the employer of the development of this disease which wouldn't otherwise be captured by the legislation?

CHAIRMAN (Mr. Bell): Mr. Haynes.

MR. HAYNES: If an individual doesn't have any of the enumerated grounds, is that the basis of your question?

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: What I am suggesting is that a person at the initial diagnosis may not be experiencing any other form of disability. They are healthy, they are capable, they are not falling under any of the other prohibited grounds of discrimination, but there may be a concern on the part of the employer that the very fact of that diagnosis predisposes them to be disabled at a future point in time and they choose not to hire the person on that basis.

CHAIRMAN (Mr. Bell): Mr. Haynes.

MR. HAYNES: In that respect it depends on how you might -- the first suggestion is if you look at the term "illness". The question is if someone has been to a doctor, what constitutes illness? If the person receives a note stating that he or she is ill. Our concern again is if you have illness, which would be the term that has been defined in other jurisdictions. While the person may not be HIV-positive at the time -- and the person may not ever become HIV-positive. They may have symptoms, and symptoms of HIV to my understanding would be other diseases. There is a family of diseases which could lead to the development of HIV. If someone has those symptoms of that particular ailment, that would be an illness, so the discrimination would be on the fact of that illness rather than going into the issue of "perceived".

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Ms. Peterson.

MS. PETERSON: Just two final brief points, one on perception of disability, and I have wrestled with this one. I find it sort of intellectually challenging. Let me set an example for you. If an employer thinks that someone is disabled, thinks that they have FAS, say, but they don't really. So the person doesn't fall under any category of having an actual disability, an actual illness, an actual condition, but the employer thinks they do and chooses not to hire them on that basis. The very act of making that choice, albeit on incorrect information, is a discriminatory choice. How else do you cover that kind of situation?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Haynes.

MR. HAYNES: The bottom line, I would think, if you are looking at hiring, is the question -- is there a bona fide occupational requirement for a person to be healthy or to have or not to have FAS? That would, I think, be the employer's test. The question then is how do you get to the BFOR test underneath these issues? You are right, it is a difficult phrase and that is why Justice Loffa Ray who is light years more learned than I has put this forward in his report. We are not debating that there isn't an issue that has to be addressed. Our question for the committee is, if this report from Justice Loffa Ray went to the Canadian Government what have they done with it, and why haven't they implemented it? What problems have they encountered? Have other provinces in Canada considered this in other reports? Not to our knowledge, but that doesn't mean that it doesn't exist.

Has this issue been examined in the United States? There are 50 states and they litigate much more than we do. Let's look there for some assistance. Our concern is exactly the same as yours. There is a problem. How do you address it? If we are going to address it, let's do it right. Let's have a test that everybody knows once they get into an adjudication panel. How can a commission enforce something that doesn't work? Or, worst case scenario, what if this term is used and an adjudication panel quashes it right away? Instead of taking it two steps forward, it takes it two steps back.

Our suggestion is if this term is going to be included in the legislation, let's make the case of where we can find where it has been interpreted elsewhere and let's harmonize, so that way we can point to what it means and not have the term quashed by the adjudication panel and making it a paper tiger.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haynes. Ms. Peterson.

MS. PETERSON: Just one final question, Mr. Chairman. On page 16 of your submission -- which a very helpful submission by the way and particularly the way in which it is set out so thank you for that -- under item 10 you talk about the emergence of aboriginal governments and the legislation perhaps ought to speak to whether it binds First Nations governments. Do you not think that there is a constitutional issue with whether, in fact, this legislation can do that?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Haynes.

MR. HAYNES: Thank you, Mr. Chairman. Indeed there are several questions around the issue of First Nations governance in Canada as it respects through section 35() of the Canadian Constitution, how that governs us all. What we are highlighting is not whether or not First Nations governments should be included in this legislation. The question is that we didn't see it spoken to in the legislation save for section 3, and we are asking what does the Legislature intend? The Legislature should make its intent clear. If the intent is clear, it will save perhaps unnecessary claims later. We are just seeking clarity. We don't have a view at this time one way or the other.

Since it is not in the legislation, it appears that it is not spoken to, so therefore the Act doesn't govern. We would like to see some indicator, either in committee reports or preferably in the House, so individuals later can at least refer to Hansard when making their case. While Hansard isn't binding, at least it would give the adjudication panel and accord, if there is judicial review, some understanding of what the Legislature intended.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haines. Ms. Peterson.

MS. PETERSON: That is all.

CHAIRMAN (Mr. Bell): I think when you look at the Ontario Legislature and definitions of disability, they do not use the word perception but speak to the word "had" or believe to have had" a disability. It is possible we can look to Ontario for some guidance on this and see how it worked there.

Mr. Haines, I want to thank you for coming before us today, it was very informative, interesting and we appreciate the time you have taken. Thank you.

MR. HAINES: Thank you, Mr. Chairman for the opportunity to speak today, I thank the members very much for their questions. It is like being back in the classroom in one case, and in another case like being in Chambers on Friday. Thank you very much, mahsi cho.

CHAIRMAN (Mr. Bell): Thank you. I think we will take a short recess and prepare for our next witness. Just a couple of minutes here.

-- Break

CHAIRMAN (Mr. Bell): We will come back to order. This is the Standing Committee on Social Programs and our public review of Bill 1, Human Rights Act. Up next we have Ms. Clark with the National Anti-Poverty Organization. If you would like to join us Ms. Clark -- that's fine, sure -- and if you could also introduce yourself for the record and the organization we can get started. I see you have made copies of your submission so we all have that. Feel free to begin whenever you are ready.

MS. CLARK: My name is Aimee Clark. I am here from Fort Smith. I have been a resident of the Northwest Territories for 12 years. I did work for the government and various boards and agencies for about 10 years. I am now an income support recipient. I am engaged as a stay-at-home parent. I am self-employed, a student, an advocate and an activist.

I was appointed to the National Anti-Poverty Organization in June 2002. In addition to being the board representative for the Northwest Territories I am also now their treasurer and involved in several other committees.

The National Anti-Poverty Organization is 31 years old. It is a non-partisan association with 22 board members representing all of the provinces and territories. As of May 2002 they had over 3,000 members, 765 member groups across Canada and they have 31 partnership organizations and coalition groups.

All the board members that are involved in NAPO have lived in poverty or are living in poverty. NAPO exists to be the voice of and for the poor in a wide array of national issues such as social assistance, health, education, tax policy, unemployment, housing and human rights. NAPO took the fight to the international level, in concert with like-minded groups to report to the United Nations Canada's regressive social policies and failures to follow through on United Nations commitments. NAPO has built its efforts to reflect the cultural, ethnic, linguistic and regional diversity of this country. NAPO's goal is to reach zero poverty.

The focus of my presentation today is on the inclusion of the economic, social or cultural rights into Bill 1. Bill 1 is undeniably one of the most important pieces of legislation this government will pass. This is an opportunity for the Northwest Territories to introduce progressive legislation and provide the rest of Canada with a superior model for the protection of human rights. Bill 1 talks about adopting the principles of the Universal Declaration of Human Rights, yet one of the most important covenants, International Covenant on Economic, Social and Cultural Rights is only dealt with on discriminatory grounds.

The international community has recognized for some time that human rights are indivisible and that economic and social rights cannot be separated from political, legal or equality rights. It is now time to recognize poverty as a human rights issue here at home as well.

What is the covenant on economic, social and cultural rights? The idea of economic, social and cultural rights was first introduced by the United Nations in 1948. Fifty-four years later, Canada still has not recognized these universal rights.

"The state parties to the present covenant, considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of the members of the human family is the foundation for freedom, justice and peace in the world. The ideal of the free human being enjoys freedom from fear or want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights."

I have listed a summary of the articles, I will not read in detail everyone of them. Article 1 is "All peoples have the right for freely choosing their economic, social and cultural growth." Article 6 deals with the right to work and freely choose or accept work. Article 7 deals with the right to fair working conditions. Article 8 deals with the right to join a union and to strike; Article 9 deals with the right to social assistance; article 10 deals with the family unit.

Article 11, a very important article, "Everyone has the right to an adequate standard of living including adequate food, clothing and housing and the ongoing improvement of living condition, especially the right to freedom from hunger."

Article 12, "Everyone has the right to the highest possible standard of physical and mental health." Article 13, "Everyone has the right to education." Article 28, 'All the rights and responsibilities to this covenant apply to all levels of government of each country signed to the covenant." which is very important.

I just wanted to talk about human rights at the national level. The International Covenant on Civil and Political Rights gives individuals the freedom from unjust treatment as well as giving them the right to be treated with dignity and respect. The International Covenant on Economic, Social and Cultural Rights provides the foundation for individuals to demand and have those rights. To not include these rights essentially legislates poverty.

Canada cannot even agree on what is to be used as the best measurement of poverty. "It is frequently the privileged in Canada who do not acknowledge the seriousness of relative poverty as an indicator of the lack of economic and social rights. Yet, if Canada adopted the recommendations made by the United Nations to set standards and the rights to quality of life, poverty measurement would be an obsolete tool. The federal government ratified almost all of its international treaties yet did not include economic, social and cultural rights into the Canadian Charter of Rights. One has to wonder why.

The reason is economic and social rights threaten power. We live in a world where the corporate world buys our policy priorities and direction. Canadians and governments at all levels are displaying a growing intolerance for people living in poverty. The individuals are blamed, not the conditions or the legislation. Even the language used in policies, directives and acts reflects this attitude. A new class of poor has been established, the deserving poor versus the poor who are just lazy and have to be forced to work. Some Canadians point to the poor for abusing the system or taking their hard-earned tax dollars, yet do not even notice or care that huge corporations are not paying any taxes.

Poverty is about distribution, redistribution (wealth and resources) and lack of legislation to end poverty. Canada has enough wealth and resources to care for every person living in this country. Take a step back and look at how much money is paid and resources consumed by the governments at all levels, service organizations, individuals, volunteers, anti-poverty movements, researchers -- the list goes on-- to help and assist those living in poverty. Imagine if that was all given to the social program envelope instead. For example, the federal government has changed their Rural Partnership Funding Program for 2002. The funding is now available for the volunteer sector. Unpaid labour to do our government's job.

NAPO has submitted to the Committee on Economic, Social and Cultural Rights in 1993, 1995 and 1998 and I have actually given the chairman a copy of the submission for the committee. NAPO members were there in 1998 when Canada was severely reprimanded by the Committee on Economic, Social and Cultural Rights. The concluding observations cited "impediments and principal subjects of concern." There were 21 recommendations including the realization of a decent standard of living for all; health services, child care, shelters, legal aid, prohibiting the claw back of the National Child Benefit, increase social assistance benefits to realistic levels, affordable housing, support for people with disabilities, protection of marginalized groups which are aboriginals, women and the disabled; reduced obstacles to post-secondary education; pay equity; ban workfare legislation; illiteracy; unemployment rates; public awareness campaigns; homelessness and human rights tribunals. I have actually attached to your package a copy of the concluding observations.

Human Rights in the Northwest Territories

In finalizing this legislation, the Government of the Northwest Territories needs to turn to the concluding observations of the Committee on Economic, Social and Cultural Rights. This document tells both levels of government what is required to implement the treaty that was signed. In its concluding observations on Canada's second report under the committee, the committee made these remarks:

> The committee is concerned that in some court decisions and in recent constitutional discussions, social and economic rights have been described as mere policy objectives of governments rather than as fundamental human rights. The committee is also concerned to receive evidence that some provincial governments in Canada appear to take the positions in courts that the rights in Article 11 of the covenant are not protect by the Charter of Rights and Freedoms.
>
> The committee would wish to have heard some measures being undertaken by provincial governments in Canada to provide for more effective legal remedies against violations of each of the rights contained in the covenant.

> The committee is concerned that provincial human rights legislation has not always been applied in the manner which would provide improved remedies against violations of social and economic rights, particularly considering the rights of families with children and the right to an adequate standard of living including food and housing.

By 1998, eight of the ten provinces and territories had included social condition as a statement in their human rights legislation. Regardless of what the federal government has chosen as a course of action, the provinces and territories have a moral obligation and a universal obligation to include this covenant. As stated above, the rights are indivisible. Rights within the rights are indivisible. For example, women's rights are indivisible. Public policy does not support women as mothers who stay at home and raise their children, or, women in the wage economy.

There are gender inequalities being maintained and enforced in the family and the workplace. Women in the North are more likely to have less education, more health issues, more abuse and violence issues than men. The work women do in the volunteer sector is not valued or even accepted as real work. More women households and those provided for in that household will be poorer than men. There are simply more female parents living in poverty than men.

Statistics for aboriginal women reveal that inequalities exist between women living on or off the reserves. It is not enough to establish equal pay for equal work. All of these issues surrounding the right to work have to be considered: working conditions, fair wages, minimum wages high enough to provide an adequate standard of living, the freedom to choose and accept work, the right to unionize and the right to strike. Human rights is not about the income -- this person has a problem, let's create a program or cut a cheque - human rights include the right to access all services and resources regardless of who you are.

The United Nations treaties were to be signed to establish on a global level what the rights of individuals should be. These treaties should not have been signed to be politically correct, these treaties were meant to be used. The most progressive human rights model has been developed by South Africa, who are signatories to the United Nations treaties. This model includes the Covenant on Economic, Social and Cultural Rights.

Canada is due to report back to the UN in 2003. There is going to be increased pressure from UN to implement the treaties that have been ratified. At the table Canada has passed the buck to the provinces and territories. It is only a matter of time before Canada is forced to accept that the Economic, Social and Cultural Rights are indivisible and implement recommendations by the UN. This will mean the provinces and territories will also have to adjust.

The Northwest Territories is unique because of its government structure. It is not run politically by parties. The Northwest Territories does not have the same influence or pressure being applied by the corporate world to sit on the inclusion of these rights.

The Northwest Territories has this unique opportunity to develop and set the standards for the rest of the provinces and territories. Here is an opportunity to have the most progressive human rights model, not only for Canada but for other nations as well. I have personally seen two letters issued by the Minister of Education, Culture and Employment wherein it is stated that the Minister wonders if all is being done to eradicate poverty in the Northwest Territories and states a desire to find those answers. Here is the first step.

It is recommended that Bill 1 include the articles from the Covenant on Economic, Social and Cultural Rights. As a result, amendments to the acts affected by the inclusion will have to be stated in the consequential amendments section; for example, the Social Assistance Act.

The Northwest Territories Human Rights Commission

The human rights commission is a vital part of the implementation of human rights legislation. In order to be truly effective, an independent territorial institution is required to not only investigate violations but to monitor implementation of the legislation be government bodies, corporate, aboriginal groups and individuals. In addition, there needs to be education, research, training and development as well as advocacy. Human rights should not be there for just protection. Human rights has to be a way of life for every man, woman and child.

The proposed bill does not go far enough to encompass these requirements. It is recommended that:

- The functions and duties of the commission include a research and development division;
- The research and development division include seats held by territorial and national advocacy representatives, non-government agencies who are the experts in the field;
- The research and development division include an international position that would do research and develop partnerships at the international level;
- Training includes the commission staff, all public officers, human resource officers, all governing bodies, corporate bodies, non-profit sector, communities, schools, individuals and train the trainer. One cannot assume that as soon as a human rights act is adopted that everyone will automatically understand or know their rights or that everyone working in the government will understand what those rights are.

- Training models have already been developed or are under development by various organizations. It not only makes economic sense for the commission to partner with these organizations but it would be more efficient. The commission can use existing models or modify existing models to tailor to the Northwest Territories;

- Create resource centres and each community in affiliation with community groups;

- Ensure legal aid can and will be available to those who will not have the financial resources to defend or bring a case forward;

- Powers of the commission should also include the development of an action plan for implementation and inclusion of an ongoing and long-term planning process;

- Powers of the commission should also include monitoring, analysis of all existing legislation for human rights contravention and required amendments, additions and deletions.

- The commission should operate at arms length to the Government of the Northwest Territories;

- An orientation program be developed for implementation. It cannot be assumed that all employers or employees are educated or aware of their human rights obligations;

- The commission should establish how funds gained through fines will be used;

- Create an honours program for individuals, corporations, government departments, boards or agencies who show exemplary human rights conditions;

- Create a human rights certification similar to the Worker's Compensation Board's Safety program. Publicly announce, for example, schools who have had zero instances of human rights violations (bullying);

- Incorporate human dignity and respect policies (zero tolerance) in the elementary and high schools to eliminate bullying.

I would like to close my presentation with a quote from Professor Baxi from Inhuman Wrongs and Human Rights:

> No single phrase in human history has been more privileged to bear the mission and burden of human destiny than the phrase "human rights". The greatest gift of classical and contemporary

> human thought is the notion of human rights. Indeed, more than any other moral language that is available to us at this time in history, the language of human rights is able to expose the immorality and barbarism of the modern face of power.

That concludes my presentation.

CHAIRMAN (Mr. Bell): Thank you very much, Ms. Clark. Very interesting and I think that a lot of the points you are making, especially specific to the Northwest Territories, the way in which the human rights commission will operate are points and positions that have been put forward by other organizations before you. Certainly many of these comments support those. I will ask committee members if they have any questions for you.

I will start off. You talked about on page 8, "by 1998, eight of the ten provinces and territories have included social condition as a statement in their human rights legislation." Are you referring to preamble? We have found that social condition, as far as a prohibited ground, has been found only in the Quebec legislation currently. If you could speak to that.

MS. CLARK: They have all included it, the eight that I have mentioned have included it in different ways. Let me just find it here.

CHAIRMAN (Mr. Bell): While you are looking for that maybe I can also pose another related question. Does it provide you, or your organization with any measure of comfort that the Northwest Territories is looking to be as progressive as possible here by identifying freedom from discrimination based on social condition? Unlike most jurisdictions in the country, social condition in our act is defined as "the condition of the inclusion of the individual other than on a temporary basis in the socially identifiable group that suffers from social or economic disadvantage resulting from poverty, source of income, illiteracy, level of education or other similar circumstance." I am wondering if this provides you with any measure of comfort that we have chosen to take this step.

MS. CLARK: Definitely, because it is a much broader definition of social condition than has been seen in other provinces or territories. There are some if I can find the page I was looking for that have adopted it. Actually, I just came back from meetings in Ottawa and we were talking about human rights methodology project that we are currently working on and I actually had a copy of the bill with me and they were very excited to see that that's the direction the Territories was taking. There is a feeling that there still needs to be a bigger step towards inclusion of the other articles contained in the covenant which we are not seeing at all at the national level. There is certainly nothing stopping a province or territory from adopting those.

CHAIRMAN (Mr. Bell): Any other questions for Ms. Clarke? Ms. Peterson, any questions from you? I would like to thank you for a very good presentation. We would like to thank you for coming all the way here, we know you have been on the road in Ottawa with your organization so it was good of you to drop in on your way home. We appreciate it and thank you for taking the time to sit here today.

MS. CLARK: Thank you, I appreciate the opportunity very much. I will find this information for you before I go.

CHAIRMAN (Mr. Bell): Thank you Ms. Clark. I think then the committee will recess until 1:30 when we have Mr. Erasmus.

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CHAIRMAN (Mr. Bell): We are going to come back to order with the Standing Committee on Social Programs public review of Bill 1, Human Rights Act. We have Mr. Erasmus here to present next on behalf of the Dene Nation. Welcome, Bill, if you would like to introduce yourself for the record, then you may begin as soon as you are ready. Following that I think we will probably have some questions for you from committee. Thank you.

MR. ERASMUS: Thank you, Mr. Chairman. My name is Bill Erasmus, I am National Chief of the Dene Nation. I thank you for providing the opportunity for me to make some comments to you today. Also to thank the members of the standing committee for this opportunity to have some dialogue. We have had a chance to take a preliminary look at your proposed legislation and we would like to make some comments and bring some matters to you attention.

First of all I think the ability to draft a new Human Rights Act within the context of the world today is a real opportunity, one whereby we have models that are already out there to depend on as something that we can look at, but beyond that I think we really have, in the modern context, an opportunity to really have a discussion and to come up with something that can be a model for the rest of the country. I think this should be seen as a time when we can really develop something that can be worthwhile and work to the benefit of all of our citizens.

One of the things that we noticed outright is that the legislation tends to focus in on much the way the Canadian Constitution is written, in that it is based almost entirely on the individual. It does mention groups of individuals, but it doesn't recognize, I think, the unique aspect of indigenous peoples where our societies are based on the collective, and in many instances our world view is such that we operate as collectives. We would like to highlight that.

We have had a chance to go through the legislation, but the main aspect here that I would like to focus on today would be looking at the area specially in Part 1 where you talk of the definition and the application of section 35 dealing with treaty and aboriginal rights. We notice that the wording is such that it says: "Nothing in the Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the Constitution Act, 1982."

We notice the words "abrogate or derogate", and we are talking here specifically of protection of existing aboriginal and treaty rights that are recognized and affirmed in the Constitution of Canada. Our difficulty -- and we haven't had a chance to an internal legal debate to a large extent on this -- is that it seems to appear that we are only talking of protecting legal rights that have been identified to date. My question is, are those rights that are within existing treaties, are those rights that the Canadian courts identify, international courts, what is the true meaning of that interpretation?

Then once we clarify what that means, then how do our treaties, modern agreements and so on come into effect? I will give you an example. We have the Gwich'in and Sahtu agreements that are in existence. They have been signed and they have been entrenched into the Canadian fabric. The difficulty though is that those agreements are not being implemented to a large degree. Does this clause compel Canada to affirming -- to use the word "affirmation" -- does it mean then that Canada is compelled by virtue of this Act to implement that agreement?

In other words, if I was a Gwich'in living in Inuvik and I found that a section of the modern treaty was not being adhered to by Canada, would I be able to bring that forward to the Human Rights Commission? Would the commission be prepared to deal with those rights in that regard; because by definition here they would be existing rights. They would be existing, they would be affirmed, they are in the Constitution, they are clear, there is a duty on the part of Canada to implement and they do not. Would the commission be able to have hearings, would they be able to study the matter? Those are questions I think we need to address.

The other reality is that, as I said earlier, the legislation tends to focus on the individual. It also tends to focus on legitimizing -- and I am not putting into question here the Government of the NWT but it tends to legitimize the territorial government. When appointments are made and so on they are made through the existing process. It doesn't recognize existing aboriginal governments, First Nation governments. It doesn't recognize that the territorial government is in transition and that people are different tables negotiating what the future government is going to look like at the community, regional and territorial levels. My concern here is that if that is the case then are we promoting the status quo? Some of us have had this discussion amongst ourselves over the last number of years.

What I am getting at is that I would like to suggest that the committee -- and this is the uniqueness of our situation here, I do not think that anyone else in the country is not quite, or definitely wasn't in this position when they were drafting their human rights legislation -- where people are actually at the table negotiating what the future government is going to look like. We do not have a precedent to go by, so we have to really sit down and talk this out amongst ourselves to find the best way to do it.

I think we need to have some flexibility in drafting the legislation so that successor governments or pending governments, however you might want to word it, are able to be recognized and possibly exercise the application of the Bill itself. The territorial government as it is will not continue to exist in perpetuity. It will change in the next number of years. We might want to have some wording that recognizes that. As I said, we haven't had the constitution or legal debate internally to suggest the right kind of wording, but we would welcome that kind of a discussion.

Going back to the collective rights that the Dene have always exercised and to this day want to continue to exercise, and are attempting to do that in negotiations, I think we are quite pleased to see that you have included the United Nations human rights language in here. Within that whole context of the UN, there has been discussion over the years on the rights of indigenous people at the international level. We would suggest that you also look at that as a declaration that has been worked on for a number of years. There is wording in here that can enhance the reality that I have been talking about -- and our political leaders in the North here over the last number of years.

One area that we noticed, and this may be directed to your legal counsel, I do not know if they would be prepared to comment at this point -- but in comparing the language in section 1, as I mentioned earlier, talking about treaty and aboriginal rights, there is similar language used for denominational schools. I want to bring this to your attention and we can maybe talk about it a bit, but in that definition it talks and uses different terminology, and I think we need to look at that. Where it says; "Nothing in the Act shall be construed so as to adversely affect any right or privilege respecting denominational schools under the Northwest Territories Act (Canada)."

Clearly we are using language that doesn't only look at rights but also privileges. We do not look at privileges in the definition about that, and I would like to know the difference as to why in one we only look at rights and protection of existing rights, versus rights and privileges that people have in schools. I would be interested in understanding the thinking behind it.

Again I think the legislation is important. I think we can lead the way in Canada in terms of recognizing the different peoples that we have, the different rights that they have and to have a society that is able to flow as would like to see it. In order to have that kind of legislation though, I think we need to have the time to study it, we need to talk about it, people need to understand it and there needs to be adequate dialogue. I would recommend that you look beyond the hearings that you have had -- I believe you have only gone into three particular communities. We are having people call us saying they do not understand what is in the bill and they would like the opportunity to talk to it. We want to ask that you have appropriate and meaningful consultations so that people can clearly understand it. As you know, in of our communities many of our elders are not fluent in English and it needs to spoken to in our languages so that people can clearly feel comfortable with this and be able to express themselves.

I think that over the years people have felt that discrimination does exist. They have never known, to a large extent, how to address it in a public forum or with a body like this, and they welcome this. They need to understand how it might work for them, so we need that adequate consultation.

Those are my comments. I am quite prepared to discuss further with you. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. I will ask if committee members have questions and maybe we will also get our legal staff to comment on some of the questions you have had, and I think they will probably have some questions for you as well. Committee members, any questions to this point? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman, and thank you, Chief Erasmus, for coming to the hearing today. Your remarks about the notion of the Act addressing existing rights of aboriginal people caught my attention, and I will be interested to hear perhaps from counsel and at another time from government as to why they proposed this particular wording. The whole situation of emerging aboriginal governments in the Northwest Territories is something that more and more we try to catch in our work – in other bills too. I know this is something I try to do in committee work to ask what are we doing in connection with such and such a bill or such and such a program to incorporate what will be in our new level of government in the NWT?

On this particular point I was wondering whether you had some direction or suggestions for us on how we could address it in here. For instance would just taking the word "existing" out of there be an adequate step? Would that then give the bill the scope to absorb new legislation and new decisions, new laws? Could your concern be addressed as simply as doing that, or do we have to take another run at this? Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Erasmus.

MR. ERASMUS: Thank you, Mr. Chairman. Maybe before providing comments on that, if we could have an idea of what it means in this context. They we could have that kind of a discussion.

CHAIRMAN (Mr. Bell): Mr. Dent

MR. DENT: I have trouble with this question in advance of legal comment. I do not believe that this legislation will impact on aboriginal governments, but I would be interested in hearing from legal counsel whether or not it actually will. I think that has to be answered before we can ask Mr. Erasmus on his opinion. My understanding was that we are not talking about something - section 35 rights are constitutionally protected. Nothing that a provincial or territorial legislature can do will have anything to do with those aboriginal rights. No province or territory can touch them. I guess I need some guidance from legal counsel as to whether or not there is, in fact, going to be any impact on future aboriginal governments by this sort of legislation.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden, I will go to you and if it is okay maybe we will go back to Ms. Peterson for some clarification on this point. Mr. Erasmus was looking for it as well.

MR. BRADEN: Thank you, Mr. Chairman. Mr. Dent has made a god point. I am well aware that it is the intent of this bill to provide as clear a separation as possible between constitutional and other treaty rights that are defined. What Mr. Erasmus has pointed out though is that the word "existing" seems to put a time frame on it. There will be recognition of existing aboriginal or treaty rights up to the time that this Act comes in, then what about the ones that are done in the future? It is that time shift that is proposed here that I want to explore, and Mr. Dent has made a good point to that.

CHAIRMAN (Mr. Bell): Thank you. I think Mr. Erasmus is saying that it is hard for him to comment without knowing why it is in there in the first place, why we are referring to existing. Possibly we have Ms. Peterson comment on what the government's thinking behind this was. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. When I am able to learn what the governments thinking is -- but let me give you what my sense of it is, and I think it is an issue that has to be raised with the Justice Minister in terms of drafting the bill. First of all I suspect that the wording dealing with denominational schools largely came from the Fair Practices Act with some modifications. As you know, those rights and privileges have been set out in the Northwest Territories Act with respect to denominational schools. I think the language more or less has flowed through in that fashion, and that may account for some of the distinction.

Together with the fact that I am advised by Justice persons that the wording of section 2 was very carefully crafted to try and be consistent with the constitutional language dealing with aboriginal rights, so there was a concern that there not be any significant difference in the language in this Act compared to the Constitution Act. That may account for some of the differences, but I think it is something that the committee would likely raise with the Minister to get some more clarification on it.

One of the issues that I thought I heard you raising, which I just want to make sure I understand, is that it seemed to me that you were saying that you wanted this document carefully looked at and scrutinized because it may be an approach that First Nations governments in the future may wish to adopt, so let us get it right in this format so that it will be a useful document or a useful guide in that arena as well. Did I understand you correctly about that?

CHAIRMAN (Mr. Bell): Mr. Erasmus.

MR. ERASMUS: Thank you, Mr. Chairman. I was alluding to that, but I think if we recognize that the aboriginal governments do exist and that they are indeed spelling out the kinds of authorities they are going to have, and we know that the territorial government will change in the way it operates, this Act may in fact be part of the future aboriginal government. We need to think of that and to see how we can word that. That was part of what I was saying. The other thing is -- and I know this is difficult legislation -- but to provide the type of flexibility that talks of (I am not sure how to explain it) the fact that we are developing new governments as we go along. If you look at other human rights legislation no one anticipates that. If you look at Alberta or Ontario, no one talks about First Nations governments, impending governments, within that context.

We are in quite a different situation, even if we did not have treaty or aboriginal rights. Where you have 50 percent of the population, etc., etc., etc., we could make some very strong arguments on how the bill ought to see our people. The fact that we do have governments and the realities that we have, I think we need to look at this very seriously in terms of how it may apply in these different instances.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Ms. Peterson.

MS. PETERSON: Just as to the word "existing" in paragraph 2 -- and again this is something I suspect the committee will want to raise with the Minister -- again I suspect that that language was crafted from constitutional language. There may be -- and I do not profess to be an expert in treaty law or negotiations -- but one perspective on it might be -- from an aboriginal person's perspective -- that these aboriginal rights have always been in existence. The recognition of them or not doesn't affect whether they exist. That may be a perspective that is brought to bear, but I cannot say that with any certainty. That is just a thought that has occurred to me.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Erasmus.

MR. ERASMUS: Thank you. If I take it from a different angle, I think what this focuses on is protecting existing rights that we have -- protecting existing rights. Now in the event that we identify new rights beyond what exist, depending on what "exists" means because exist may mean rights that you have in the future and this is why I am asking. Existing may mean rights, as you say, that we have always had -- rights that we have today and rights that you will have in the future. If it doesn't mean that, then do we distinguish between rights that clearly exist today and rights that we might have in the future? Is it necessary to do that? We are only talking of "protection" right?

My other question then is why do we have the word "protect" versus implement or some other word? There is an ongoing debate that is taking place, you may be ware, at the Canadian Senate level. Senator Sibbeston has been bringing this question up, and I think there is a concern across the country that the language that is being used -- and if this is consistent with that the language is not as strong as people would like it to be because it essentially just basically says that the rights are there, we recognize them and life goes on, and we really never the force of what that means. Or no one ever really works at assisting and getting along with having those rights implemented.

I think we have an opportunity here to maybe make some ground and help move this whole discussion. In a place like the NWT where, as I said earlier, we are a huge part of the population and the economy, etc., etc., we can take the lead. I want to bring these points to your attention.

CHAIRMAN (Mr. Bell): Thank you. Clearly this is very complex and requires a lot of thought and discussion. I think other presenters have also raised these issues. Mr. Nerysoo was also wondering the same thing when we spoke to him about whether or not this would provide an avenue if modern treaties were not being implemented, if this would provide an avenue for a challenge in that area. Mr. Braden.

MR. BRADEN: I do not have anything else right now, Mr. Chairman, thank you.

CHAIRMAN (Mr. Bell): Thank you. I will go to Mrs. Groenewegen and then Mr. Dent.

MRS. GROENEWEGEN: Thank you, Mr. Chairman. I don't have so much questions as just a comment. In looking at this legislation, Mr. Erasmus brings up an interesting point when he asks if the commission would be able to address the lack of activity on existing rights, and he mentioned the Gwich'in and Sahtu -- on the implementation of those collective rights. We keep coming at this from different angles. Could this legislation be sued to enhance those collective rights? On the other hand we hear how this legislation might potentially infringe on those rights because we are looking at trying to ensure that the Act doesn't say anything that would take away from those existing rights that Mr. Erasmus was just talking about.

I guess on the personal side we are hearing from people in the Northwest Territories -- and you mentioned that 50 percent of the people in the Northwest Territories are aboriginal -- but we have also heard from aboriginal people who should be protected by those rights that you are interested in enhancing, who feel that their personal rights within their own aboriginal governments are not being addressed. Therefore they want this legislation to reflect their ability -- whether they are part of an aboriginal treaty group or not -- they want this to be able to address their concerns about how they perceive their rights being met by their aboriginal governments. The whole thing gets -- I guess when you are talking about human rights legislation everybody perceives it differently.

We had a presenter this morning that raised the question -- given the importance of the growing number of aboriginal governments in the Northwest Territories the Legislative Assembly may wish to consider whether those governments ought to be bound by this legislation? That was one of the questions raised this morning.

I hear what you say about just being cognizant of the fact that there are these other emerging political realities in the Northwest Territories in drafting this legislation, but in order for it to be very comprehensive and all things to all people it really hurts my brain thinking about how we accomplish that. Just about everything you raise has a converse side to it. Just a comment.

CHAIRMAN (Mr. Bell): Thank you, Mrs. Groenewegen. Do you want to speak to that, Mr. Erasmus?

MR. ERASMUS: Yes, thank you. I think you bring up some very good points, Mrs. Groenewegen. The fact that you have an opportunity to develop a piece of legislation that helps the individual in a whole number of ways, and potentially the collective, is an opportunity to enhance -- you have brought up the word "enhance" -- you really have an opportunity here to develop something that can work. I think that it is okay to look at all of these angles and to really understand. You bring up the point of an individual within the collective. They need to be protected, true. It gets very complicated and we have the duty I think to take -- and that is why I am saying that we need the time to look at the complications that may arise in the event that we do not look at all these points. Let us provide the opportunity to do that. I really think we need to talk about it. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. As the chair mentioned, we talked about the issue of collective rights and individual rights with Mr. Nerysoo when we met with him in Inuvik. Unfortunately we do not have our records or our Hansard from that meeting yet, so I am working from memory. I wanted to just say, and I guess I should be careful and I hope that I am not putting words in Mr. Nerysoo's mouth, but if I remember correctly it seemed to me that he was saying that after his admittedly brief look at the Act, and he did make the point that he hadn't had a lot of time to look at the Act so this was his first cut at it -- I think this is what I heard him say. He said that since the collective rights flow from the rights of the individuals within the collective, to create that collective right and with the knowledge that the Constitution protected the treaty and collective rights -- he felt this Act looked like it was doing the right thing because it was helping individuals without damaging the collective rights.

I was just wondering if Mr. Erasmus takes the same view -- to help us understand this issue of collective versus individual rights, would he agree with that assessment that the collective rights flow from the individuals? It is the collective individuals together that have those rights?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Erasmus.

MR. ERASMUS: Thank you, Mr. Chairman. I think there is a debate as to where the rights actually derive from. The way I understand it is that the rights that we possess as Dene come from our land, and that is why people are so adamant that we maintain that relationship we do have. That land was provided to us here as first peoples, and we were provided in the beginning with a set of instructions as to how to care for that land, ourselves, the animals and the elements that go with that. So our society is organized as a collective based on the relationship we have with the land as hunters and gatherers, so if you can connect that with what Mr. Nerysoo is saying I do not think we disagree to a large extent except that he may assume that you understand that when we talk about ourselves we do not detach ourselves from the land. If that helps, that is the big connection that has to be made.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. My other question for Mr. Erasmus has to do with consultation. This bill has probably had more public consultation than any other bill this government has undertaken. It has probably had more public input, vision and so on over the past two years -- more than any other bill I remember since being elected in 10 years. I am a little surprised that Mr. Erasmus is suggesting that we need to do more. I know the committee when we have gone out for our public hearings we have not been assailed by a large number of people asking us to clarify the bill, to discuss the bill or wanting to appear in front of us. It appears that the department and the government did a fairly good job of contacting a broad number of parties and individuals, a real good cross-section of the Northwest Territories. We are, in fact, looking at about the third version. If you look at where it has come from as the first draft of the bill, this is pretty well the third draft of the bill we are looking at -- in response always to the public consultation process. I believe that aboriginal and community governments were always involved in the process from the beginning. If we do not move forward with it it won't get done because we will be into the next election and the next group will have to start over again. The chances of ever getting this sort of legislation through, if it is not accomplished within the four year life span of any one Assembly, is very small. This did get started in the first months of this Assembly, and we are just now getting to the point where it is getting into the final stages of public consultation.

I guess that is just more of a comment. The committee itself is going to have weigh the recommendation that we try to slow this down with that knowledge that there has been an awful lot of consultation and an awful lot of time passed since this was first made public -- that this is what we are looking at doing. Not really a question, Mr. Chairman, just a comment.

CHAIRMAN (Mr. Bell): Thank you. Maybe, Mr. Erasmus, you would like to comment on the process. The committee has tried to do extensive consultation and tried very hard to solicit input. We know the government has had a couple of rounds of consultation, and I believe that you were on their consultation list a couple of times. Can you talk about the process maybe and explain how you felt it has been deficient. Thank you.

MR. ERASMUS: Thank you. I want to make a quick comment on it. I can only go by what our membership tells us. I know that our Assembly this summer we had some of the members there and the bill did on the floor. We did not have a very extensive discussion on it. That is not the standing committee's fault, but we did not have the kind of discussion we wanted to have. I know that the biggest region within the Mackenzie Valley, the Deh Cho, have made it clear to us that they haven't had a chance to have the kind of dialogue they want to have. I notice they are making a presentation later today, so I imagine you will hear something to that effect.

I do not know exactly what your process involves when you try and consult people and so on, but I think we can probably improve on it. I think on a piece of legislation like this that affects each one of us, as it might, we might spend more time together trying to devise the best way to work at it. When you go into communities, for example, I do not if people are aware of it when you get there. I know that a lot of times people listen to the radio and they say, "Oh gee, I did not realize they were, in fact, in Inuvik." People just do not get that opportunity, because we are all preoccupied with a whole number of things. Even to look at this legislation I do not know if you have provided assistance to people to get legal advice to scrutinize it, you need a particular type of person with a particular type of training to understand what it says, for one thing, and then what it might be missing and what it might say on other issues. We do not all have the capacity or the ability to do that.

I am not talking about slowing it down. I am not saying do not pass the legislation. I am in fact saying let us do it right so that it can be applied and it can be a commission that people can actually depend on. I want to make that clear.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Any further questions from committee members? Maybe I will ask Ms. Peterson if she any questions. Ms. Peterson.

MS. PETERSON: I am taking from your comments, Mr. Erasmus, that you feel strongly that you want aboriginal people to have the protection as individuals, as individual aboriginal people, that would be afforded under human rights legislation. Am I right about that?

CHAIRMAN (Mr. Bell): Mr. Erasmus.

MR. ERASMUS: Yes, clearly.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: And do you see that individual protection for aboriginal people being affected by, or operating through, aboriginal organizations?

CHAIRMAN (Mr. Bell): Mr. Erasmus.

MR. ERASMUS: The point I was trying to make earlier is that the legislation has to allow for the flexibility of that to be clarified. People may want future governments to exist through a whole number of avenues. The Legislative Assembly may change to some extent because of future negotiations. We do not know how the rights are going to be expressed within new agreements and so on, and at the same time we do not want the ability for people to develop new institutions and so on -- we do not want people to not be able to do that. The legislation, as I said earlier, needs the flexibility to anticipate to a large degree that the status quo you might find in Canada will not exist here.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. How do you see that flexibility best being built into the legislation?

CHAIRMAN (Mr. Bell): Mr. Erasmus. I know these are difficult questions -- just if maybe you could discuss this a bit. We are not asking that you have all the answers.

MR. ERASMUS: What I keep on thinking, and what I haven't mentioned, and I do not know if this would be precedent-setting -- but would it be possible for the standing committee to have a special session that just dealt with this question where we could bring in some of our experts at this end and where we could have two or three people -- someone for maybe from the Metis, someone for the Dene and someone for the Inuvialuit because we are each in the Constitution with separate rights and so on? Would it be worth our while to have a discussion amongst ourselves so that we could actually get the kind of wording that will satisfy people?

On the one hand with the modern treaties you cannot have in the legislation that supersedes and at the same time you want to be able to co-exist; the legislation needs to co-exist. We may be able to develop the kind of language that helps us to anticipate. I do not know, I put that forth to the committee. It may provide us the kind of protections that people may just be afraid may not be in here. It could deal with this question of whether we have enough consultation or not. What it does in the end, regardless of what occurs as an individual and as collectives, the infringement is not there, but at the same time it enhances the ability for us to function well into the future.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus, that is a very good point. It is certainly something that we will have to discuss. It is important that the two pieces of legislation do dovetail and can co-exist, as you say. Ms. Peterson.

MS. PETERSON: Mr. Erasmus, on this one I am just going to ask for just some thoughts, it is just an example. I have been trying to work out in my own mind and I deal with things, I understand things better if I pose for myself concrete examples so I can see how something might work or not work. It seems to me that an aboriginal person, as any other person, would want the protection of the Human Rights Act and not to be discriminated against for any of the prohibited grounds. Let's take disability as an example because it is one that we can latch on to fairly easily. An aboriginal person would want the protection from being discriminated against because they are disabled in any situation in which they find themselves, whether they are living in Yellowknife, whether they are dealing with a band council, whether they are dealing with a hamlet council in getting housing or any one of those situations. If you want to have protection presumably you want to have protection in whatever situation you find yourself.

Do you agree with that basically, or do you think that those protections have to be modified depending on the circumstances that the person finds themselves in?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Erasmus.

MR. ERASMUS: Thank you, Mr. Chairman. I think we need to take a very close look at that question, and it is a very good one. I reside in N'Dilo where the chief and council are the governing body. It is not strictly speaking a part of Yellowknife, but I work in Yellowknife. The question is, would the chief and council -- and this is a question that should be addressed -- or the local band authority be subject to this legislation? If that is the case, then people clearly have to know that, because I don't think that the chiefs and councils are looking at this in this way. That is the situation that we are in.

The bands are guided by the Indian Act. Does this supersede the Indian Act? What is within the Act? Are those rights, are those privileges? We need to look at all that. Or should the bill recognize that the chief and council has certain authorities over their membership, and the bill cannot infringe on that? I think we need to have some discussion that clarifies that. It is not to say that we need to be dealt with differently. They are the legal realities in Canada. If I go to court, for example, if I go moose hunting and an officer charges me tomorrow, there is a certain body of jurisprudence, law, that looks at myself because I am a Status Indian versus a Canadian citizen that is not. Those are legal realties. They are not something that we are making up. We need to look at all of those aspects.

If the intent here is for this Act to apply in all instances on band lands, on settlement lands -- we have the Sahtu agreement and the Gwich'in agreement and the Dogrib agreement being close to completion and so on -- then people clearly have to understand that. We are going into different areas of jurisdiction, and they may want, for example, to look at it from a different light and to say that they want some participation in choosing the members and so on, rather than it going to the Legislative Assembly where they don't really have any say in that matter to a large degree.

That is why I am saying that once we begin to talk about it there are a lot of areas that need to be clarified.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Ms. Peterson.

MS. PETERSON: Just to maybe clarify one point. I think the understanding with respect to this legislation is that this legislation can do nothing to oust the jurisdiction of the federal government in its constitutional relationship with aboriginal people and its dealings with aboriginal people. It could never supplant that jurisdiction, and any given case I think would be driven by its facts in terms of who are the bodies involved, is it a band council, is it a First Nations government? That may well shift the jurisdiction from under this Act to a federal regime.

I guess what I was just exploring with you in kind of a philosophical way was whether the immutability, if I can put it that way, of certain rights is considered to be an important goal to be fostered in your opinion by human rights legislation, whether it is federal or territorial legislation? Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Erasmus.

MR. ERASMUS: Thank you. I think the fact that the Act deals with rights is very significant. There are not a lot of pieces of legislation that do that. Because of that you need to go out of your way to ensure that -- and I don't mean this in a negative way -- more than lip service is applied. The commission, once in place, needs to have clear authority and binding power to make decisions and have the ability to, as it attempts to do, to have the cross-examination powers.

The commission members need to feel comfortable as members. It has to be designed in a way that actually has credibility in the eyes of the citizens, so I am saying that we need to explore ways to allow all instances or all possibilities to be protected. I am not an expert at drafting legislation or having it in its final form. I am saying that that kind of flexibility is required so that we don't run into problems in the future where someone challenges the authority of the commission.

CHAIRMAN (Mr. Bell): Thank you, Mr. Erasmus. Ms. Peterson. Any further questions from committee? Seeing none, I do want to thank you. You have given us much to think about. Certainly there are questions that you have posed and that have been posed to us previously about the ability of someone to come forward and initiate a process because they feel their treaty is not being implemented. You also talked about the appointment process and why it is just the GNWT doing this if we want this, in fact, to be able to be implementable by future governments and the need for some sort of flexibility to surround that. I guess it raises so many questions it is hard to imagine allowing for that flexibility without also asking those governments who we would try to accommodate to also be asked to adhere to this legislation. Clearly we have section 2 unique only to our legislation. No other provinces or jurisdictions have such a non-derogation clause with respect to aboriginal or treaty rights in an effort to respect that.

As you say, there are many questions around this. I think we do need and will continue to have future discussion on this, but we really appreciate your taking the time to come down this afternoon and share some of these thoughts with us. Thank you.

MR. ERASMUS: Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): We will take a five minute break and come back with the next presenter.

-- Break

CHAIRMAN (Mr. Bell): Okay, we will come back to order and resume the Standing Committee on Social Programs public review of Bill 1, the Human Rights Act. Again, for the record, we have committee members Mr. Dent, Mrs. Groenewegen, Mr. Braden, I am Brendan Bell, committee staff, Mr. Inch, Ms. Fenney, Ms. Peterson. We welcome Zoe Raemer, who is here to present on behalf of OutNorth. Zoe, if you would also like to introduce your colleagues and then begin. I think the format that we have been using is that you can make your submission and I think we will probably have some questions from committee for you and we will go back and forth through the chair, if that is all right. Please proceed when you are ready.

MS. RAIMER: Thank you, Mr. Chairman, members of the committee, staff. I would like to introduce the president of OutNorth, Jerry Vandenbilche. He is here with us, and the secretary of OutNorth, Tammy Wotherspoon.

OutNorth congratulates this government for introducing Bill 1, the Human Rights Act. We support the premise of this legislation outlined in the preamble that every individual living in the Northwest Territories is free and equal. This is the premise of the universal declaration of human rights and the Canadian Charter of Rights. It is time for this territory, as one of the last jurisdictions without a Human Rights Act, to follow in those distinguished footsteps.

In fact, this territory has the opportunity to pass a human rights act that will be a model for other jurisdictions to follow, both in scope and application. The government has the opportunity to make a bold statement about the future -- a future where this government promotes the dignity and respect of all people by protecting them from discrimination.

We believe this act is necessary and important for our members because some of them have complained formally and informally over the years about not getting jobs or places to live because of their sexual orientation. The old Fair Practices Act did not offer us any protection. The Human Rights Act prohibits discrimination with respect both to employment and the provision of goods, services and accommodation. This legislation would acknowledge our rights and says they are worthy of protection. It tells us the gay and lesbian community is part of the larger community of the Northwest Territories, and we believe that is a positive and affirming start for all of us.

We attended a seminar on the Human Rights Act, sponsored by the Northern Territories Federation of Labour last month and we appreciated the opportunity to spend two days studying and debating Bill 1 with labour, women's groups and advocates for people who are mentally and physically disadvantaged. We will not attempt to repeat all the points made then but focus on those that are relevant to our membership.

Our brief is divided into three parts; a description of who we are, our suggestions for changes to Bill 1, and our conclusion. There are several appendices.

OutNorth is a registered society in the Northwest Territories with a membership open to all persons who support our objectives. First, we seek to educate our own membership and the public at large regarding the existence and positive contributions of lesbian, gay, bisexual and transgendered people to Yellowknife. We believe this information fosters an enlightened view towards Yellowknife's diversity and gives strength to those who struggle to find a voice in some of the smaller northern communities.

OutNorth seeks to offer moral support to lesbian, gay, bisexual and transgendered persons. The society's very existence demonstrates that there is a minority community, one that continues to be marginalized by society at large. Within the safe environment of OutNorth, our membership and those who need our help find strength.

OutNorth also believes in a good measure of fun, hence our objective to organize and participate in social, artistic, literary and sporting events of interest to our membership.

Moving on to the proposed changes to Bill 1 that we are recommending. The preamble to Bill 1 states that every individual living in the Northwest Territories is free and equal without regard to a number of conditions, including his or her sexual orientation. This is an important inclusion from our point of view and we appreciate its presence without having to argue for it.

However, in order to be more encompassing of the full spectrum of human diversity, we recommend the addition of the phrases gender identity and gender expression.

Gender identity is how one perceives one's sex, regardless of his or her biological or physical reality. Many transgendered people feel that they were born the wrong sex. There are men who feel they should have been born women and visa versa. Some people choose surgery to make the transition from one sex to another. Regardless, the rights of transgendered people deserve protection in this act.

Gender expression is a slightly different concept. It refers to everything we do that communicates our sex or gender to others; clothing, hairstyles, mannerisms, ways of speaking, occupations and societal roles. For example, a heterosexual man with an effeminate voice deserves to be treated the same way as everyone else does. We all deserve our place in society as we actually are rather than being forced into a narrow ideal.

The narrowness and rigidity of the concepts that society uses to define gender identity and sexuality can leave an individual deprived of a feeling of belonging. Such individuals deserve the protection that a human rights act would provide.

We recommend the phrases gender identity and gender expression be added both to the preamble and to the list of prohibitive grounds of discrimination in part two.

Finally, we would like the preamble to state that the Commissioner of the Northwest Territories and Members of the Legislative Assembly are role models for the human rights this act seeks to protect. Some of the more recent debate on Bill 5, An Act to Amend the Adoption Act and Family Law Act, denigrated gays and lesbians, partly because of its ignorance of our rights -- rights established and protected by Canadian law. Fortunately, this debate does not reflect the Cabinet's position on human rights.

Premier Stephen Kakfwi has said that discrimination on the basis of sexual orientation is unacceptable. The Premier made the following statement in July:

> The people I come from treat gays and lesbians very well. They are an important and accepted part of our community and I do not see any discrimination there, and if there was, I would say shame on us and we should not discriminate. It is not acceptable anywhere.

We hope he is able to convince others to show the same level or respect for the rights of all people who live in the Northwest Territories.

With respect to part one, we are unclear about how the Human Rights Act would apply to aboriginal and Inuit people who are gay, lesbian, bisexual or transgendered. We understand the Canadian Human Rights Act applies to a complaint made against a band council, but we are unclear which legislation applies to complaints made against aboriginal governments. Our concern is that gay, lesbian, bisexual and transgendered people of aboriginal or Inuit origin are afforded the same level of human rights protection as everyone else.

With respect to part two, we applaud this government's inclusion of social condition as a prohibited grounds for discrimination. We believe it is important and beneficial for the members of OutNorth to be protected from discrimination based on their social or economic condition, since our members, like the society at large in the Northwest Territories, come from various levels of income, literacy, education and employment.

We applaud subsection three of section five, where the act protects not only individuals from discrimination but also protects them from discrimination based on association with an individual or individuals identifies by a prohibited ground of discrimination. In short, we believe this act protects gay, lesbian, bisexual and transgendered people, but it also protects our families and those who are sympathetic to us, whether professionally or personally.

With respect to part three, we have several suggestions relating to the membership and role of the human rights commission. We believe that the commission should be broadly representative of the population of the Northwest Territories. We also believe it should be independent by operating at arms-length from the government in a role analogous to that of the Workers' Compensation Board.

The commission should have responsibility for supervising the director and the commission staff in their work, as well as responsibility for promoting human rights as now outlined in the act. We would prefer not to see all the power of the act invested in one person, the director. The act must be made to work by the commission as a whole.

We believe that commissioners should be appointed from a pool of nominations provided by those groups most likely to need the help of this act. We support the recommendation of the recent human rights seminar to draw nominations from First Nations, community groups, labour, as well as the Legislative Assembly, and to seek nominations from the public. We believe a person should be considered for nomination if he or she is knowledgeable of human rights and shows an awareness of the diverse cultures of the Northwest Territories. Any vacancies that occur subsequently should be drawn from the same pool of nominations, or from a pool created by consulting the stakeholders, as mentioned above.

We believe the first members appointed to the commission should hold office from two to four years to give them time to learn their roles and responsibilities, and we believe the commission should choose its own chairperson.

In conclusion, we would like to reiterate the major points that we have made. We support the government's initiative to at last provide the Northwest Territories with a human rights act. We believe the act is essential for both the promotion and protection of human rights. We are pleased to see sexual orientation as a prohibited grounds of discrimination. We would like to see those grounds broadened to include gender identity and gender expression. We would like the issue of protection for gay, lesbian, bisexual or transgendered people of aboriginal or Inuit origin clarified. We would like this act administered by a commission rather than by a director.

We would like to thank the committee for the opportunity to speak to you. We look forward to a well-informed debate about Bill 1 when it comes to the Legislative Assembly next month. We believe it is in the interest of everyone who lives in the Northwest Territories that we work together to create comprehensive legislation that promotes and protects human rights. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Ms. Raemer. I think we will go to committee first for some questions for you, but I would say that many of the positions that you are putting forward are positions that have been presented by other groups coming before you, so some of these will serve to support those positions. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I think it might be useful to ask the Law Clerk if we could get the answer to the question that has been posed in part one here. I believe that, just as with band councils, the CHRA would apply to aboriginal governments, but perhaps we could ask the Law Clerk to let us know.

CHAIRMAN (Mr. Bell): Ms. Peterson, if you could help us out.

MS. PETERSON: Thank you, Mr. Chairman. I believe the jurisdiction with respect to human rights issues for First Nations governments, once established, will remain in the federal sphere because of the particular constitutional status of those bodies.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. We have received a couple of other presentations where they have recommended that we add in transgendered to the definition, but nobody else has suggested sexual identity and expression.

I am just wondering, you do not appear to have recommended the transgendered quite as strongly as other submissions that we have. Was that because you had assumed that we would move on that, or it just is not as strongly in here as what the other two might have been?

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Raemer.

MS. RAIMER: Thank you, Mr. Bell. I think when we speak about the issues of gender identity, gender expression and then sexual orientation, gender identity…we have provided an expression that maybe helps explain those three concepts to you at page…excuse me while I find the page…starting on page 15, I think, my page 15 but probably not yours…page 8. I do not think that we assumed necessarily that the legislation would encompass transgendered individuals, so I think if you look at the continuum chart where you will see gender identity, that is where we are asking for that to be incorporated.

I think we talked about gender expression as well because we also believed that was another way that discrimination can be perceived and has happened in the past, so we would strongly include that. I would ask my colleague, Ms. Wotherspoon, to add to that, if that helps.

CHAIRMAN (Mr. Bell): Ms. Wotherspoon.

MS. WOTHERSPOON: Gender identity includes transgendered people, as a definition. The idea of transgendered, which is a person who has that sense of being in the wrong physical body and wishing to transition to the opposite sex, that is part of what gender identity is. Gender expression is more of a way that a person would express themselves but they have no real interest in changing their biological sex assignment, if that is helpful.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: Again, and it is short notice, and maybe it is unfair to do this to our Law Clerk, but I would just like to get a bit of an understanding from the legal perspective. Is this not covered under the current legislation? If so, is the concern…could it not be covered under the current legislation? Let me start there.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Peterson.

MS. PETERSON: I think arguably, it is not. I think that is the concern that is being expressed here, that there is presently some litigation in the province of British Columbia, which you may be aware of, which is dealing with some transgendered issues with respect to women's organizations and a safe home environment. That is starting to bring forward the issue that sexual orientation does not necessarily protect – those words do not necessarily protect transgendered individuals. It is an emerging area, as you can imagine, but…

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Dent.

MR. DENT: Well, if it is an emerging area, with the words gender identity and gender expression, is there any case law? Would that help us to put those in or are we still going to be at the whims of the courts and how they interpret what that means? Is there some way to accomplish what the recommendation is and make sure that it is certain?

CHAIRMAN (Mr. Bell): I guess, just to add on to that, do other jurisdictions specifically state expression and identity in this manner? Ms. Peterson.

MS. PETERSON: I do not believe any other jurisdictions deal with gender identity and transgendered persons in their human rights legislation. I could stand to be corrected, if you are aware, to the contrary. Apart from the case I just referred to in British Columbia, I am not aware of a lot of case law, but I have not looked carefully at the issue. I understand what you are trying to get at -- try to provide the protection with the language that is clear and simple and not open to controversy, I suspect is what you are looking for.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Raemer, anything to add? Are you aware of any case law or other jurisdictions with this?

MS. RAIMER: Personally, I cannot provide that information, but if we can provide that at a later date, we would be glad to do so.

CHAIRMAN (Mr. Bell): Thank you. We will certainly research that as well. Any questions from other committee members? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman, and thank you, members of OutNorth, for coming to our hearing this afternoon and for taking the time to comment on the proposed bill. You present a suggestion here, and others have too, in the composition of the commission and the adjudicative panels. It is a really interesting area. I think we are going to be spending a lot of time on it as a committee and perhaps in the Assembly when we debate the bill.

We have had recommendations that everything from geographic to gender, you know, male/female balance, to aboriginal…many, many different combinations that people want to see covered in here.

You have suggested that the people who can serve as a pool, nominees, would be provided by the groups most likely to need the help of this act. So I take it from that that you would like to see people on there who are advocates of certain concerns or certain areas where there may be shortcomings in human rights. I wanted to ask of you if you look then at a commission as a whole, it is made up of five members who come from various corners, if you will, of society. Are they then going to be best equipped to make decisions and make judgements on behalf of society as a whole? Or is it your expectation that they would sort of fight their corner if and when it came up, but then not be expected to step up to the plate when other decisions or other interest are there.

I guess I am looking for…what kind of an emphasis should we put on it? Get in specific sectors or go for a broader sphere of competence, if you will? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Raemer.

MS. RAIMER: Thank you, Mr. Chairman. I think I recognize the complexity of the situation before you. How do you constitute a commission that will be able to address the needs of the entire citizenship within the Northwest Territories with respect to human rights?

A couple of things that you mentioned I think are important. What we also say, first of all, I do not expect or I do not think we expect that the individuals chosen for the commission necessarily need to be advocates for their particular sector of society or the conditions that they happen to represent and that are in need of protection from a human rights act. I think there is a difference between being an advocate of that, as you mentioned, fighting for only one sort of narrowly defined scope of activity, and perhaps having the experience of being in a marginalized portion of society and understanding what it means to be discriminated against in any manner, way, shape or form.

I think we also recognize that the constitution of the commission, that the way the commission is constituted, needs to be reflective of the society as a whole, but it seems, I think, to us to make sense that those best able to understand the circumstances of being discriminated against or being marginalized or in fact, people who come from those kinds and walks of life, I think there is a basic level of competency that would need to be met in terms of the ability to address broad issues of human rights and the concerns that are going to be brought before the commission.

CHAIRMAN (Mr. Bell): Thank you, Ms. Raemer. Mr. Braden, anything further?

MR. BRADEN: Other presenters have expressed a concern, and I would say it is a legitimate one, that such a commission would not become a ground for political favouritism, or political reward, if you will, that we really want this commission to mean business, we want it to be hands-on, and to have as little or no political influence in its make-up whatsoever. But there still has to be an accountability there. Someone still has to make a formal appointment.

In that, I do not see in your presentation an objective or an alternative to that. There needs to be some kind of governance function to making the appointment, but you are proposing here that there be quite a, I think, a fair amount of structure to how that pool of nominees is put together. How do we decide who are the nominators? There is some general guidance here, but boy, are we getting off in another direction where every single interest group or person with a concern wants to be able to put a nominee in. Where do we put a cap or a control on the process?

These might sound like extremely detailed things, but at some point, they are going to be of considerable concern in process and how we form this thing. So anything you might be able to provide that would give us some advice on how do we put together that pool of nominees.

CHAIRMAN (Mr. Bell): Ms. Raemer, any guidance in this area?

MS. RAIMER: Mr. Chairman, if I could turn to my colleague, Ms. Wotherspoon, and if I could just say one thing, though, in preamble to that. I think it is not an easy task, but I think a human rights commission made up of those folks who have experienced the conditions which require the act in and of itself is a good starting point. The process and the procedures, you are right. It could generate a fair amount of debate over the merits of whether a -- how many different subgroups of society do you try and contain within that, but perhaps we have a little more detail we could provide, if I could turn to my colleague.

CHAIRMAN (Mr. Bell): Thank you, Ms. Raemer. Ms. Wotherspoon.

MS. WOTHERSPOON: Yes, I am not sure that we managed to pull together a very straightforward process to manage that. Our concern was that it was not a political appointment simply by the Legislative Assembly, that they would consult with these groups and call for nominations from these groups and from that pool, then determine what the appointments would be. That was our concern with the legislation as it exists right now, that it fairly clearly just states that the commission would be appointed by the Legislative Assembly. From our perspective, the recent Bill 5 debate has us concerned about the Legislative Assembly's consistent ability to be able to appoint someone to that commission that would be of a high enough knowledge level to satisfy what our requirements of a commission would be in terms of protecting our rights. That is why we felt really strongly about moving away from strictly an appointment by the Legislative Assembly, that the Legislative Assembly would take recommendations from these groups as a pool of people, and then consider them on their merit.

CHAIRMAN (Mr. Bell): Thank you, Ms. Wotherspoon. Just so I can be clear, it is not so much the actual appointment process by the Legislative Assembly that concerns you as much as it is the nomination and the solicitation of nominations from the larger broader groups across the Northwest Territories, public at large and some of these groups that you mention. So the fact that the Legislative Assembly would still rate these nominations and then do the appointing is not the concern, is that correct?

MS. WOTHERSPOON: That is not...that part of the process...it was where the people were.

CHAIRMAN (Mr. Bell): Thank you. Mr. Braden.

MR. BRADEN: This is a helpful discussion for me. It sounds like one approach could be simply putting an add in the paper and inviting people to submit names or put forward names of people who they feel would be, and then there is a deadline and that is it. That is the open process. So we do not need to get too sophisticated. Thank you. That is great. That is all I have, Mr. Chairman.

CHAIRMAN (Mr. Bell): Okay. I would like to comment on one point that you have raised in reference to the comments that you prefer not to see all the power of the act invested in one person, the director. This is a comment as well that has been made previously, and certainly something that I think we need to have some discussion around. The act, I believe, already allows for the commission to delegate such things at it sees fit to the director and it is possible where we read specifically director in this act, it could say commission, that the day-to-day operation of the office would still be handled by the director. It may not need to be so specific. As well, that may help us with the issue of having the government sort of dictate how the commission will be run, and specifically, we get into too much detail, there is a question about the arms-length relationship, I think.

I think those points are well-taken. I am just trying to see if we have anymore questions that I have noted. Ms. Peterson, anything you would like to add or ask?

MS. PETERSON: I do not, thank you.

CHAIRMAN (Mr. Bell): Seeing no other questions, I would like to thank you all for the presentation today. It is great to see such a good turnout. We appreciate the interest. Thank you very much for spending some time with us today.

We will recess until 3:30 for the next presentation.

-- Break

CHAIRMAN (Mr. Bell): We will resume with the Standing Committee on Social Programs public review of Bill 1, the Human Rights Act. For the record we have committee members Mrs. Groenewegen, Mr. Dent, Mr. Braden will join us shortly, I am Brendan Bell. Next to present is Mr. Fisher from Egale Canada. Mr. Fisher, if you could introduce yourself, please begin with your presentation and then we will likely have some questions for you.

MR. FISHER: Thank you very much, Mr. Chairman, committee members and staff. My name is John Fisher, I am the executive director of the group called Egale Canada. I would like to first of all thank you for having me to speak here and I express my appreciation to the group OutNorth which just presented for extending the invitation to Egale. This is the third time we have submitted a brief to this committee but the first time I have had the opportunity to appear in person so I certainly appreciate that opportunity.

Secondly, I would like to say congratulations on doing this. I think many have spoken before you about the importance of human rights legislation and many of the strong commitments that are in the draft bill which will send a powerful message about the commitment of the Northwest Territories to human rights and equality issues.

It is 25 years now since the province of Quebec added sexual orientation to its human rights legislation. In the intervening years, as you know, virtually every jurisdiction across the country with the exception of the Northwest Territories and Nunavut have prohibited discrimination against lesbians, gays and bisexuals. We see it as a very significant and important step that very soon we hope we will see comprehensive protection for lesbians, gays and bisexuals across Canada so that our rights as lesbians, gays, bisexuals and hopefully transgendered people as well not depend upon where in the country we happen to live but will be universally and uniformly recognized in each jurisdiction.

You have a copy of my brief and I thought I would just give you a quick overview of how it is structured. I won't read extensively from it but I will direct your attention to certain parts. The first part is a general introduction and overview of who we are and what we will be addressing. The second part sets out some of the social, legal and political contexts to the protection of lesbians, gays and bisexuals from discrimination.

The third part deals specifically with the issue of transgendered people and gender identity which is a major theme of our brief.

The fourth part goes through the specific provisions of the bill and makes a number of detailed type comments on little things that we could be strengthened in places and some wording changes that we would recommend.

To give you a very quick introduction to who we are in case we are not so familiar to some of you, Egale is a national organization which advances equality and justice for lesbians, gays and bisexuals and transgendered people and their families across Canada. We have members in every province and territory of the country. Our board is regionally elected and consists of a male and female person from six different regions of the country. We have been pleased to have members of the Northwest Territories serve as members of our board in the past.

We have often appeared before particularly federal parliamentary committees, but often before provincial and territorial committees as well. We have also intervened before the Supreme Court of Canada in all of the lesbians, gays and bisexuals equality rights cases and I have been called on occasion as a witness before human rights tribunals on human rights issues as well.

We have a fairly detailed understanding of the overall movement towards equality for members of our communities. We thought that one thing we may be able to offer is to situate some of the provisions of Bill 1 within the context of what is happening elsewhere around the country.

In terms of the social context of discrimination against lesbians, gays and bisexuals and transgendered people, I have set out from pages 3 on in the brief some of the history of discrimination that we have experienced. I will not go through that in detail, I understand that the fact that sexual orientation is in the bill is a message that there is a recognition of a need for our protection and a recognition of the history of discrimination we have faced. Suffice to say that throughout Canadian history we have faced psychological treatments to try to cure us of our homosexuality, we have been subjected to electroshock therapies, we have been excluded from the armed forces and from the public service. We face discrimination in employment, accommodation and access to goods and services.

Often that has had the usual devastating results one might expect when people face a sustained pattern of discrimination. In our case there is the added feature that sexual orientation is something that is not immediately visible or apparent and so many feel pressured to hide our sexual orientation, to hide our identity and to stay in the closet as we call it, which can have very severe and damaging effects upon our self-esteem, our sense of respect and belonging in our families and our communities and within our regions and country.

One of the most devastating consequences of that pressure and that psychological damage is the elevated rate of suicide, particularly for young lesbians, gays, bisexuals and transgendered people. On page 4 of the brief, I have included an excerpt from a suicide note that was written by a young 14-year-old who jumped from a bridge in British Columbia. It is something I did not include lightly but in his notes he says that he wants his story told, he doesn't want other people to have to experience what he went through. Because he has asked that his story be told, I would like if I might just to read quickly from that excerpt. He wrote:

> "First thing is, I love you Mom and Dad, but you didn't understand why I had to commit suicide. There was so much going on and I tried to cope with it but I couldn't take it anymore. School was the main reason. It was horrible. Every day I was teased and teased, everyone calling me gay, fag, queer. I would always act like it didn't bug me and ignore them but I was crying inside. It hurt me so bad.
>
> I know you are going to miss me and that you will never forget me, but you would never understand. You weren't living my life. I wasn't as happy as I looked. I hate myself for doing this to you, I really hate myself, but there was no other way out for me. I know I left my room messy. You can clean it if you want.
>
> I love you Dad and Mom. Please, please tell the people at school why I did this. I don't want someone else to have to do what I did. This was a message to show what name-calling and teasing can do."

Tragically, more than a year later there has been a similar suicide in Prince George, B. C. where another person of a similar age left a note which has very powerful resonances with this one. Obviously changing the law is not going to change attitudes overnight, it is not going to stop people from taking their lives, but having a commitment and affirmation of the importance of human rights and the wrongness of discrimination both protect people when they face discrimination but sends, I think, also a strong message about the values that we hold dear and the tactics which should guide us in our treatment and respect of other people.

The next portion of the brief looks at the legal context and I am sure that you are aware that the Supreme Court of Canada has unanimously ruled that it is in fact unconstitutional not to include sexual orientation in human rights legislation. Alberta sorts to justify its exclusion of sexual orientation as a ground from its Human Rights Act. The court reviewed its rationale for doing so, found it was discriminatory and said that lesbians, gays and bisexuals within Alberta must have protection from discrimination and required that the law be extended.

While that is relevant to sexual orientation it should be noted that it is also relevant to other grounds that might be left out. The claim that was made in Alberta on the grounds of sexual orientation it should be noted that that is also relevant to other grounds that might be left out. The claim that was made in Alberta on h ground of sexual orientation could just as easily have been advanced by a transgendered person on the ground of gender identity, for instance, or any other group of people who feel disenfranchised or excluded from human rights legislation.

That is one of the reasons why if we want constitutional legislation in place it is important to try to be comprehensive in identifying the grounds of discrimination at the outset and make sure that no one who we are aware of who has a need for protection is left out.

The next section beginning at around page 7 just traces some of the developments politically around the country. Probably the easiest way to draw your attention to this is to look at the very final page of the brief where I have included a chart which we prepare for our membership. It just looks at what changes have been made on different issues in different jurisdictions across the country. One of the things that we do as an organization is because the law has often been changing so quickly in this area we are often asked by media, politicians, the public at large, our community, just what are the rights in different parts of the country, so we try to articulate different kinds of rights which we have done across the top of the chart. Then we have check marks and X's depending upon whether that right is protected in the particular jurisdiction.

In the first column it shows all the other jurisdictions that do prohibit sexual orientation discrimination and then if you go across the row we can see what the level of protection is in different jurisdictions. I am very pleased that as a result of Bill 5 adopted earlier this year and hopefully with this legislation as well we will be able to change those first three boxes for the Northwest Territories to check marks. Up until Bill 5 we had a row of X's there. It is nice that when people look at this chart they realize that there has been significant movement towards equality for members of our community in the Northwest Territories.

That is our quick overview of the situation in regard to sexual orientation. In relation to transgendered inclusion, which is an important issue given the fact that the degree of protection afforded by the current bill is not so clear, that is addressed from pages 8 on in the brief. I think the starting point is just recognizing that exactly the same history of marginalization, exclusion from employment, goods and services, accommodation, apply to the transgendered community. It is the same level of violence, harassment, suicides, discrimination. it is all completely part of the transgendered experience as well.

There was a question about the relationship between the transgendered and the ground gender identity. Perhaps one way of explaining that is transgendered describes the group of people. Gender identity what is often used as the ground of discrimination which might be included in human rights legislation. In the same way that lesbians, gays and bisexuals are referred to by the ground of sexual orientation transgendered people are often referred to by the ground of gender identity and we would support the position of OutNorth that gender expression is also a way of ensuring comprehensive protection both for the identity of people who are transgendered and also the way in which they might express that particular gender identity.

I have attached just before the chart a newspaper article called Sex Change Costs Hotel Job. I am sorry to flip back and forth a little bit but these are a couple of attachments we have at the end of the brief. This just articulates one example of discrimination. It tells the story in Edmonton in May of this year of a transgendered woman who was doing fine in the hotel industry. She was employed at the front desk at Travel Lodge. She got a promotion shortly before she was dismissed, she was recognized as employee of the month. When she identified herself as transgendered and began to live in her identity as a woman her bosses were initially quite supportive and sought to accommodate her. A short while later they called her into their office and dismissed her. As a result she has brought a human rights complaint there.

I think that is a story which is fairly common and which I think can be easily recognizable in any one of the other grounds currently protected as giving the rise to a need for inclusion within human rights legislation.

There was a reference to some of the cases that are currently taking place around where the transgendered people currently are recognized as having a right to protection under human rights legislation. There have been a number of cases around the country. I think the case involving the transgendered woman and the women's shelter is called **Nexon vs. Rapperly S**ociety of British Columbia. That was decided earlier this year.

The tribunal held that transgendered people currently are protected under British Columbia's human rights legislation on the ground of sex and as a result the tribunal issued a ruling favourable to the transgendered woman who was initially excluded from the women's shelter. There have been other similar cases I think in Quebec.

Probably there is strong case law to suggest that transgendered people are protected currently on the ground of sex. There are a number of reasons however, why we believe it is important to recognize gender identity as a ground in its own right. First, just for the sake of clarity it is something that if it is not spelled out it can be subject to variation according to the nature of the complaint, the jurisdiction in which it is being heard, the degree of awareness of a particular adjudicator. I think transgendered people have a right to know whether or not they are included in the act and whether their human rights are equally respected. The only way to do that is to include the term explicitly. If it is what we mean, say it.

Secondly, I think there are issues that are unique to the transgendered experience, being transgendered carries with it a number of features of discrimination. It is appropriate to acknowledge that and develop a term that can be adapted for the particular kinds of discrimination that are faced by transgendered people some of which are set out in more detail in part C of our brief.

Thirdly, I think one of the most powerful reasons is the educational value of human rights legislation. Human rights legislation exists as an ambulance at the foot of the cliff for people who have faced discrimination and need a means of redress. It also exists as a means of sending a message about what kinds of discrimination are prohibited. If it is just wrapped up in some general ground, employers, others with responsibilities do not necessarily know that that extends to transgendered people until they find themselves facing an adjudication process. Far more powerful is to ensure that transgendered people and gender identity are expressly recognized in the bill from the outset so that everyone knows their rights and responsibilities. The commission can serve its educational function.

We turn now to the final portion of the brief which looks at some specific comments and recommendations we are making. This starts at page 10 and as we go through I will also highlight places where we could address issues such as gender identity.

The first point there I will not go into in any detail, it simply starts by affirming our support for the adoption of the Human Rights Act. It notes to that there is a parallel process taking place in Nunavut in which they too have recognized the limitations of the previous, more limited legislation and are seeking to come up with a more comprehensive regime for human rights within Nunavut. There have been some consultations that have taken place there. There has been a strong degree of support by Inuit participants in those consultations. On page 11 I have cited some extracts from the consultation report.

In particular, the human rights legislation that is being considered there has been situated within the history of human rights violations that have taken place within the territory. One of the comments made in the consultation report is that the vulnerability and post-traumatic stress of the Inuit. Many are still recovering from

gross human rights violations in their recent history and must be taken into account in designing the human rights system for Nunavut.

There has also been discussion there about how to best ensure that in Nunavut where aboriginal people are a majority that the appropriate balance is struck between collective rights and individual rights. I think the feeling there has been that the human rights legislation can send a strong message that respect for human person and human dignity is in fact very consistent with collective rights and that one can affirm collective rights while expressing support for the whole person and respect for the individual.

Finally, I have also included some extracts from this report which is a very good report prepared by a group called Two Spirited People of the First Nations. It is called We Are Part of A Tradition. It articulates some of the experiences of Two Spirited People which, as I am sure you are aware, is the term that is sometimes used for aboriginal lesbians, gays and bisexuals and documents some of their unique experiences. Obviously in the brief I have not been able to express that with the texture and richness it deserves. I only have my copy of this report with me, but if it is felt that it is something that would be of interest or useful to the committee I would be happy to have other copies forwarded to you.

In terms of the specifics, we have already talked about our support for sexual orientation. Gender identity and gender expression, the best thing, as you have heard from us and OutNorth is to simply add gender identity as a ground in clause 5, paragraph 1 there. There are other ways in which it could be done. For instance, I noticed in subsection 2 of clause 5 there is a section on pregnancy which just clarifies, for example, that sex discrimination includes discrimination based on pregnancy. I think it is something that we all know, that pregnancy discrimination is sex discrimination. We want to be clear, we want to be explicit about it so we have a paragraph that just says that sex discrimination extends to and includes discrimination against women who are pregnant.

It would be possible to add a similar paragraph that would say, for the sake of clarity, sex discrimination includes discrimination against transgendered people or includes discrimination on the grounds of gender identity and gender expression. Our belief, as I have explained already, is that it is better to have gender identity and gender expression as actual grounds and that way they can be developed in the same way as the other grounds and the unique experience of transgendered people can be recognized.

Nonetheless, I would say that something explicit is better than no reference at all so that is why I mentioned the alternative. I think Ms. Peterson is correct in saying that no other jurisdiction currently includes gender identity as a ground in their human rights legislation. It should be noted though that the Canadian Human Rights Commission has recommended it as has the B. C. Human Rights Commission and the Ontario Human Rights Commission has adopted quite detailed guidelines for receiving complaints based on gender identity.

In 1999 there was a parliamentary committee that travelled the country to hear submissions about how the Canadian Human Rights Act could be strengthened. One of the submissions it heard was about adding gender identity and as a result of that this parliamentary committee recommended to government that gender identity be added to the Canadian Human Rights Act. That is something which is likely to happen, we hope, in the near future.

Given that there are several jurisdictions where gender identity is being considered as a ground and complaints are already being received in some jurisdictions, since we are aware of it it is best to do it now rather than have to come back and amend the act later once it becomes recognized in other jurisdictions.

Family and marital status are also things we support. I just note that in the context of the Northwest Territories that having adopted Bill 5 and allowing for same-sex adoptions, all the more reasons to ensure that, for example, children being raised within same-sex households do not face discrimination based upon the fact of their family status. If we are going to recognize the need for same-sex adoptions then it is important to recognize that nobody should face discrimination because of their diverse family structures. Family status and marital status are obviously important grounds.

We have referred to the definition of disability and I had a chance to quickly pick up and peruse the submission of the Northwest Territories Council of Persons With Disabilities. I note that their support for including actual and perceived disabilities, which is something that we would support as well, I noticed that they expressed some concern that by having a long and detailed definition of disability that could in fact serve to limit the kinds of disabilities that are included. I see that they referred to HIV status which is a concern for our organization as well, particularly since someone who is HIV positive may not have any symptoms at a particular moment may not have any illness as such. I think the current definitions set out in clause 1, depending upon the circumstances, could pose problems for someone trying to bring themselves within the definition if they are asymptomatic and still facing discrimination.

One proposal that we have made in our brief is that at a minimum, instead of saying disability "means" and saying disability "includes" and then list the factors. Then you get some clarity while not limiting the scope of that definition. The inclusive language would be more appropriate than the restrictive language that is currently there.

I will not go into detail about social condition and political belief which I set out on page 14 of our brief other than to say that we support their inclusion. We have noted a couple of factors that strike us as potentially limiting and we are recommending be removed. We weren't sure why political belief was only referenced in the context of clause 7.2 when presumably it could arise just as easily in the context of accommodation and goods and services, as in the context of employment. Our recommendation would be that it be added simply to the list of grounds in clause 5.

We have concluded our discussion of the actual grounds of discrimination. By referencing analogist grounds, we know that new grounds get identified over time, human rights legislation evolves and the Charter of Rights, the equality guarantees are worded in a way that enable courts to recognize new grounds as they emerge. It would be possible to have a similar clause in here that would give the commission some flexibility to address new grounds that are identified over time. That also helps to avoid the constitutional problems posed by a case like Vriend where if you leave a ground out you run the risk of a constitutional challenge because the legislation is under-inclusive. So some flexible formula to expand it over time can be valuable.

We support the inclusion of multiple grounds of discrimination and discrimination based on association in clause 5.3. I will not go into detail there. One thing though that we suggest adding in clause 5.3 is perceived grounds. I think obviously there has been some effort made in the bill to recognize that grounds intersect and that you may associate with people on different grounds and that there are times when perceptions can give rise to discrimination. I think overall it has been a very good job done in clause 5 of recognizing those linkages.

There is no explicit recognition that people can face discrimination based on the perception that they belong to a particular disadvantaged group. There are a couple of places where it is referenced but it is not done consistently so the disability definition, for instance, does say actual or perceived. Then if you look at 5.3 paragraph (b) it talks about the individuals association with an actual or presumed person identified by one of the grounds. This concept of perception is there.

Just as easily of course is that someone can be perceived to be lesbian, gay out bisexual or transgendered. If a woman is working in a traditional male environment if she is assertive, or a male is working in a traditionally female occupation if he is effeminate, even if he is heterosexual he may be perceived to be lesbian, gay, bisexual or perhaps transgendered and that could apply to any of the grounds.

We feel the simplest thing is to add an additional paragraph to subparagraph 3 there which talks about perceived grounds and we have suggested some wording in the brief which I will not read out to you now but which you can look at at your leisure.

Harassment, we support the recommendation and we have supported the recommendations of other groups that that be generalized a bit further and we have also supported the recommendations of other groups around the promotion of hatred and I won't go into that in detail.

A couple of things that I did want to quickly draw your attention to. I suppose I should pause at this point and ask if I am going to fast - I have a tendency to get carried away and I am conscience of the time and I want to leave time for questions but want to make sure I do not leave anything else. Is this pace of delivery okay with everybody?

CHAIRMAN (Mr. Bell): I think we are doing fine.

MR. FISHER: All right then. On page 18 of the brief, we look at the research and outreach and education function of the commission. Obviously that is a very valuable and important one. In general we are happy with the paragraphs and functions of the commission articulated in clause 20. In clause 20, paragraph (c) I think it would be valuable to add research as one of the ways in which education programs can be advanced. It is probably understood in terms of information and education but I think it is useful to articulate it as something specific.

Unless I am missing something, under clause 22 there is subparagraph 3, the ability for the commission to enter into agreements with community organizations, particularly around alternative dispute resolution. The other functions described in clause 20 seem to be left to the commission itself. If we are going to recognize the commission's ability to have agreements with community organizations, it seems to us that it would be valuable to enable them to have similar agreements with community organizations to deliver any of the programs identified in clause 20.

The reality is it is often community organizations that develop specialist expertise around a particular ground, how it impacts members of their community. Often, I think, community organizations could have a very valuable role to play in talking about the use of language, design of an education program, how it can best be tailored to reach into a particular community to help with the drafting of some of the materials, provide resource information, guest speakers, you name it. I think the commission's functions would be enhanced if that ability is recognized explicitly in the legislation.

The next section we wanted to look at was the remedial orders that can be made if a complaint is upheld. That is set out in clause 62. In paragraph 3 there is a good list of orders that the adjudicator can make if the complaint is found to have merit. There are a number of things that we feel are missing here.

In particular, there is compensation for lost wages, there is an order that the activity is discriminatory and that it should be ceased. There is a fairly general one that enables the adjudicator to put the party in the position they would have been in but for the discrimination.

It is short on things like measures to address systemic discrimination and education programs. We feel it would be useful to address something like apologies, training programs, educational initiatives within the workplace, tools that generally raise the level of education, understanding and awareness of human rights and perhaps the particular group targeted within a workplace or a particular environment. I think that would be very consistent with the functions of the commission described in the section we just looked at, clause 20.

Reinstatement is not explicitly mentioned, I think it is probably assumed, but it wouldn't hurt to set it out explicitly. There may well be financial issues beyond just compensation for lost wages that should be explicitly referred to. There might be consideration given to things like exemplary damages, if an employer has been particularly contemptuous of the rights of the complainant and if the only way to send them a clear message that their behaviour is unacceptable is to escalate the degree of damages then that is something that I think can have a valuable role.

That leads into the next section also which is -- later on in the bill we have a provision, clause 72 on maximum penalties. There we support the positions of other groups that have appeared before you. Those penalties could be increased as well to send a serious message about the value we attach to human rights. We have noted that within the Canadian Human Rights Act the maximum penalty is $50,000. I think that is broken down so it is something like $20,000 for injury to feelings, $20,000 for other components, $10,000 for another. The total that can be awarded for a breach is $50,000 which obviously sends a fairly strong message.

Just going back to the previous paragraph in our brief which deals with affirmative action, again we support the recognition in clause 67 that policies that are designed to address the disadvantage of protected groups do not constitute discrimination, that is consistent with human rights legislation across the country. It is an appropriate recognition. There is also an acknowledgement that an approval process under the Fair Practices Act or an approved program under that act would, by definition, be deemed to meet the test in the first paragraph.

We felt it might be useful to maintain an approval process. We think programs should have to be approved in order to meet the requirements of clause 67, but it can be a valuable tool to enable community groups, employers and others to be confident that a program they have which is designed to advance equality passes muster and will not be subject to human rights challenges down the track. And, to get the commission's feedback at an early date about what aspects of the program might need to be tweaked a little bit to bring it within the scope of clause 67.

Those were our submissions on the detailed provisions of the bill. In general we support the positions taken by OutNorth and those arising from the Federation of Labour conference that took place recently where a lot more recommendations were made through those processes. Obviously we have not had a chance to address them all.

In going through some of the detailed stuff in the last quarter hour or so, I do not want to take away from the main message that we have here today which is this is a strong affirmation of human rights. It is a powerful step forward. The inclusion of sexual orientation is particularly welcome. The protection of the rights of transgendered people is something that is particularly important for our organization and there are ways in which that can be done, we think consistently, with the purposes and intention of the legislators.

Even with the passage of this bill, there will still be some X marks left on that little chart that we have so we hope that the valuable process that has been started through Bill 5 and Bill 1 will continue and we encourage a comprehensive review of all the legislation of the Northwest Territories to look at how discrimination against lesbians, gays, bisexuals and transgendered people can be fully removed so we can participate as equals in the life and society of the Northwest Territories.

That is my presentation. I am very happy to receive your questions.

CHAIRMAN (Mr. Bell): Thank you. Very detailed, very comprehensive presentation. It is going to be very helpful and I think we would also like to thank you for coming all this way to make the presentation. Certainly it was better to have you make the presentation in person than to just receive the submission. We appreciate that. I will ask committee members if they have any questions for you.

I would like to point out, and possibly it is not specific to the chart that you speak of, but we are trying to get credit for all of the check marks that we can. I think in the life of this government we passed amendments to our Family Law Act which allowed for spousal benefits to be conferred on same-sex spouses as well. I don't know that that might get us some way towards a check mark in inheritance and death benefits, but if at all possible we would like to pat ourselves on the back for that.

I will ask committee members then if they have any questions for Mr. Fisher. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. Thank you very much, John, for coming up to visit us. The aspect of education, the mandate of education and awareness that the bill proposes has been welcomed by other presenters as well. It is not lost on me that the more energy we put into helping people understand what grounds of discrimination are prohibited, those are the kind of things that are going to serve us much more efficiently than waiting for a whole bunch of stuff to end up before adjudication or before court.

Then, if we set that as a goal or a mandate, how do we deliver? Your suggestion on page 18 where you take up the subject of research, outreach and education is interesting. The bill would also enable a commission to enter into agreements with community organizations to provide alternative dispute resolution. You suggest that the commission should further be enabled to contract with community organizations to do research and deliver education programs.

From your perspective, a national perspective, what kind of organizations are best equipped to take up this role? Are we looking for, for instance, front-line delivery agencies, maybe like the Salvation Army or that kind of organization? Who has the tools and the skills to help us deliver this education?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Fisher.

MR. FISHER: I think it could be a variety of organizations depending on the need and the circumstances. Certainly front-line service delivery organizations have a valuable role to play, those who are directly involved in dealing with homeless, aboriginal, youth will have perspectives and means of reaching out that others may not. I think NGOs and organizations that represent people with disabilities, people on the basis of sexual orientation, women, et cetera all have valuable role to play.

We have certainly been approached by the Canadian Human Rights Commission in the past to participate in the process of designing brochures that would be distributed in the workplace to find people who might be able to assist with a poster; to use our own networks to distribute materials prepared by the commission within our own communities and to members of our organizations.

It can vary a lot on the circumstances. One of the key things, to be quite frank, which won't be fixed by the kinds of remedies we are suggesting is the issue of resources. We have often had the Human Rights Commission say to us, "We would like you to do all this work but we have no resources for you, and we would like you to distribute this to your membership. Yes, we have the mandate to do education programs but we don't have any actual money in our budget to pay you to do this."

So, a group like Egale which only exists because members of our own community give us donations is expected to incur even something as simple as the postal costs of mailing the material out to our membership. There are a number of groups dealing with the lesbians, gays, bisexuals and transgendered community which are of course the communities I am most familiar with, have speakers programs and go into schools and talk about their personal experiences. It is not just individuals going in there and talking off the cuff. Often there are quite professional training standards that they have met and deliver effective programs that raise awareness of people within a variety of environments.

I am aware of police officers who have done very good outreach around hate crimes, what is prohibited and what is not. Police officers often go into schools and talk about what it means to serve the public good. Because of their position of authority I think that can send a powerful message to young people about the diversity of our societies.

I wouldn't necessarily limit the kinds of organizations. I would want to, I would think, empower the commission to have a breadth of options available to it in searching for the people who are experts in particular delivery programs. Above all, I would sort of urge that in the budget of the commission there be sufficient resources to actually do education and outreach well because it is not uncommon elsewhere around the country for commissions and tribunals to have such a backlog of human rights complaints that they do not have the time and resources to do effective outreach and education.

CHAIRMAN (Mr. Bell): Thank you, Mr. Fisher. Mr. Braden.

MR. BRADEN: That is all for now. Thanks.

CHAIRMAN (Mr. Bell): Certainly you did touch on adequate funding. Even if that is something that is not typically in legislation like this, we certainly can provide guidance for the government in this area. I have a question for you about perceived grounds. You pointed out rightly so that we have included this when we talk about disabilities and not so in other prohibited grounds.

I wanted to ask you about case law in this area and whether you were aware, it has been suggested that if an employer discriminates against me because they perceive I have a disability, rightly or wrongly, the courts are interpreting that that is discrimination based on a disability. The perception is tantamount to a disability.

Would that be your experience or would you have any knowledge in this area as it relates to other prohibited grounds?

MR. FISHER: I think that is true, I think the standard approach of tribunals is to try to give human rights legislation an expansive interpretation where possible. A number of the clarifications in clause 5.3 probably would be read in there by a human rights tribunal or an adjudicator, even if we didn't talk about multiple grounds, or association, or perceived grounds.

Nonetheless, we have seen fit to include multiple grounds in association explicitly within paragraph 3 because as we have said before, it is good to have clarity and it is good to have an educational statement about the way human rights work within the framework of the legislation and within the society we live in.

So, the multiple grounds one is important because I think as part of the education process people need to understand that our identities and human rights are not something you can divide into little boxes. They often do intersect. Even if the courts would otherwise have read it in, it is appropriate to spell it out in paragraph a for the same reason that I think perceived grounds, it is important to have clarity and to let people know that even if they are not themselves lesbians, gays and bisexuals, but are perceived to be, they would have the basis for making a complaint.

I suppose there is also the additional consideration that somebody who is heterosexual has been discriminated against on this basis might consult a lawyer or otherwise review the legislation himself or herself and ought to be able to see clearly that perception is a basis of discrimination rather than perhaps getting bad advice or feeling that they do not have a basis for complaint because they are not one of these groups named in the legislation.

CHAIRMAN (Mr. Bell): Good point. Any other questions from committee members? Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman and thank you, Mr. Fisher. This is not something that is particularly touched on in your brief and if you do not feel comfortable talking about it that is certainly all right. We have had a fair amount of discussion with other presenters about the structure of the commission and the roles in it, and also a fair amount of discussion about the position of an independent advocate separate and apart from the Human Rights Commission which would assist complainants in sheparding complaints through the process, as it were.

In your review of the legislation, do you have any comments to offer to the committee, firstly on the structure of the commission, adjudicators, directors as set out in the bill, and secondly do you have any comments on this question of an independent advocate?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Fisher.

MR. FISHER: Those are good questions. They are not ones I will go into in any detail. I am aware of the submissions that have been made by other groups and generally support them. The points I chose to focus on where what I thought were questions of policy that have somewhat universal application in the human rights context and it seems to me that some of the submissions being made to you about the particular structure of the commission were coming from a position that would make the commission more responsive to the local needs of people in the Northwest Territories so I felt it better in choosing what to address to leave that to those who are directly impacted by that.

That said, as I understand those submissions they are designed to ensure the there is a breadth of perspectives covered on the commission and that complainants have the support that they need to guide them through the process. I think any measures that can be done to make the process easier for complainants is valuable.

I think one of the challenges is getting people to the front door of the commission in the first place. The more they feel that this is a commission that will be knowledgeable in the area, be responsive to their needs, where they will get the support and guidance that they deserve is valuable in human rights and in the sexual orientation context too. The pressures to remain invisible, to hide our identity, to stay in the closet, to keep quiet about what we experience, are great. Therefore I think the more accessible that process is the more likely we are to get to the root causes of discrimination that members of our community experience. In one of the cases I referred to, there is a young man who faces severe discrimination in his school environment who again, does not identify as gay himself. Perhaps there are other people in that circumstance who are gay but wouldn't identify as such but would still like to feel there is a process they understand and where there are people who can assist them through the process.

By contrast, Egale has submitted a brief, or at least will be before the weekend, to the government of B.C. on their proposals to essentially scrap their human rights commission and divide up their functions among a variety of different groups and have a complaints driven model. We think that is very much a step backwards, that they are losing a number of functions of the commission to be proactive in doing outreach, to have people on staff who can help in the initial mediation and investigation of complaints, who has responsibility for education. The B.C. model is not at all clear, so we think that you are certainly going in the right direction for this legislation and we would support the submissions of other groups by way of restructuring the commission.

CHAIRMAN (Mr. Bell): Thank you, Mr. Fisher. Seeing no further questions we would like to thank you for this very involved and very thought-out presentation. We appreciate you taking the time to put this together and also the time to come and see us. I don't know if this is your first time to the North, but we hope that you enjoy your stay.

MR. FISHER: Thank you for having me here. I appreciate it.

CHAIRMAN (Mr. Bell): Thank you. We will recess until the next presenter which is 4:30 p.m. unless he is here earlier.

-- BREAK

CHAIRMAN (Mr. Bell): We will come back to order and continue the Standing Committee on Social Programs public review of Bill 1. Next on our list to present is Mr. Hayward from the NWT Federation of Labour. Mr. Hayward, for the record, if you could introduce yourself and your organization, and then you can begin with your submission when you are ready.

MR. HAYWARD: Thank you. My name is Bob Hayward, I am president of the Northern Territories Federation of Labour. With me is Trudy Samuel, co-chair of our human rights committee. We want to make a presentation together today.

Before we commence our examination of Bill 1 I would like to give you a little background of the Federation interest in this. Like you, our goal is to make sure that we get it right. When the first draft came out, we had a meeting with the Minister of Justice and we had a private meeting with Sue Heron-Herbert to discuss our concerns.

When a second draft came out this past winter we decided that we would devote part of our upcoming convention to educating our members about the proposed legislation. In fact, half of our convention was devoted to discussing and examining the proposed legislation, both here and in Nunavut. From this we formed a human rights committee for the NWT, of which Trudy is a co-chair along with Bill Schramm.

MS. SAMUEL: Our committee decided that we needed more discussion before we could make recommendations, and that we needed to include as many voices as we could. While we were challenged financially, on August 23 & 24 2002, the Federation did hold an educational forum on human rights legislation in the NWT. We invited numerous people to the forum, including all the Members of the Legislative Assembly. We had over 40 participants for our full-day forum on Friday. On Saturday the session again had over 40 people.

Because we wanted to ensure that we could answer questions, we invited some experts from various organizations. We had the head of the human rights department from the Canadian Labour Congress, as well as a representative from the Canadian Human Rights Commission, help answer some of our questions. Most important to us, though, was that we had participation from all over the territory. We had participants from Inuvik, Fort Resolution and Fort Simpson, as well as from Yellowknife. We invited representatives from the various unions, as well as non-government organizations and the government.

MR. HAYWARD: But before we go any further, I have to say that I am very concerned about the way in which the Federation was treated by the Leg. Instead of applauding our actions, the Speaker of the Assembly turned down our request to have a public meeting in the Great Hall as a wrap-up session to our weekend workshop. We wanted to ensure that the issue of human rights was given as much attention as possible, but we were told, and I quote, and I have given out the letter: "The forum you will be conducting could be viewed as a partisan event on a sensitive issue." The Speaker then went on to say that, "We do not provide use of the building for events of this nature."

This is the most important piece of legislation a government could ever propose, and yet the Speaker would not allow a discourse to take place in the Great Hall. We were shocked and tried to discuss the matter, but we were still refused and finally decided to hold our wrap-up at Yellowknife City Hall in the Council Chambers. I will come down and let you go ahead.

MS. SAMUEL: I will now get back to the proposed bill. Our goal for the weekend was education and information. We wanted to discuss the idea of human rights in general and the proposed bill specifically. We wanted an open discussion of what was good about the bill and what they thought should be changed. We came up with a number of each kind of recommendation, and we have provided you with a copy of these, but before we go on we would like to give some general comments.

First of all, people complained about the lack of plain language used in the present draft of the bill. While it was recognized that an important piece of legislation must conform to legal standards, there seemed to be a lack of even an attempt to put some of it in plain language.

Another concern that most participants had was to ensure that the commission on human rights had the necessary resources needed to implement the bill even when economic times are not as good as they are now.

Another overall complaint was that people felt rushed into this, and they weren't sure and didn't know why the government is trying to push this through so quickly. A human rights bill will be here for years, and there is a real concern that we should do this correctly and not rush it just because there is an election coming up.

MR. HAYWARD: A related concern was the process being used at these hearings. On Wednesday morning I heard an interview in which it was said that the committee is satisfied with the consultations that occurred in the communities and that perhaps the reason people didn't come out was because they were happy with the legislation. We think there is another reason for the poor turnout. There is a lack of knowledge and understanding in the communities. Last weekend Trudy, along with some other people, went to Fort Providence and co-facilitated a two-day workshop on the proposed legislation, and there was a lot of concern and questions raised.

We feel it is incumbent on the government to do more than just put an ad in the paper and say that we are coming to town for a day or two, so come out and bring us your concerns. We feel that the government has to be proactive and go out to the communities and educate the population. We believe that the general public did not fully realize the significance of the legislation because they weren't educated properly about it.

The final general comment I wanted to make is that from a labour perspective this exercise has reaffirmed in our opinion the need for labour legislation in the NWT modeled after the Quebec legislation.

Now we would like to go through the recommendations that we came up with from this weekend exercise. I don't know if you want to start.

MS. SAMUEL: Sure, I would like to. As we mentioned in our introductory remarks this document was created by a group of people who came together to discuss issues of concern about the proposed Human Rights Act for the

Northwest Territories. This document is provided to give you an overview of the discussions that were held.

The first place we wanted to start with was what we liked. There were several things. The inclusion of sexual orientation, social condition and place of origin are included in the proposed Act. We saw it as a good thing that the director of the Human Rights Commission does not have to be a lawyer. The inclusion of domestic workers and their rights was key and important. The group saw this proposed bill as a first good step and an improvement over the Fair Practices Act, and certainly an improvement over the first draft.

They were pleased because it provides for a Human Rights Commission and provides for an educational mandate for that commission. It includes the duty to accommodate. It improves the proposed adjudication process that was outlined in the first draft. Annual reports must be provided, that was seen as a very good thing. The idea of a separation between the commission and the area of adjudication was seen as important, and the provision of an area on the delivery of goods and services.

People were encouraged by the reference to agreements with community organizations and them working on behalf of the Legislative Assembly. People were also pleased by the reference to political affiliation and family affiliation as grounds for discrimination under the proposed legislation.

MR. HAYWARD: I know that you all have this in front of you, but I am just going to read through some of the recommendations for changes that we have made.

In the preamble, we have recommended that it should include language that ensures that the NWT Commissioner and the Legislative Assembly are responsible for, and a role model for, human rights. It should include a statement about the collective rights of workers to ensure that machinery for voluntary negotiations between employers or employers organizations and workers organizations to enable them to determine their terms and conditions of employment, collective agreements and other collective actions.

In the second paragraph we get into real details here. The group on that weekend sat around, it was facilitated by about four or five facilitators and they went through this thing clause by clause by clause, word by word. A lot of this is all very much the details, and I am not sure if you want to go into each and every one of them right now or if we can just skip through to the main ones.

CHAIRMAN (Mr. Bell): It is entirely up to you, Mr. Hayward, how you would like to do this.

MR. HAYWARD: Okay. In the second paragraph we recommended that you remove "whereas it is public policy" to read that "every individual in the Northwest Territories is free and equal..." That you should add recognition of the environment rights, clean air, water, food, health care, shelter, child care and meaningful work and universal education. I am just going to skip some of these things here. That you should include mobility, residency, gender identity, family affiliation, political belief, affiliation or association. You should include freedom from personal harassment, including harassment that is not based on any of the prohibited grounds. Include language that states that the NWT Human Rights Act supersedes all other legislation.

MS. SAMUEL: Part 1 concerning interpretation and application, the group had specific recommendations around the definitions. Again this relates a lot to the plain language recommendation that was made by the people in this forum. They wanted to add a definition of "administrative tribunal", add a definition of "adjudication", change the definition of "community organization" to add that the community organization is under the authority of the Human Rights Commission in acting on behalf of the Human Rights Commission.

Change the definition of "disability" to: "disability" means any actual or perceived disability that an individual has had, has or has a predisposition to developing" and add other suitable wording. Expand the definition of "document" to add "audio visual, electronic and/or alternative format". Change the definition heading of "employers' organization" to "employer" and add that this means a person who or an organization that discharges the obligations of an employer in the provision of services.

Add a definition of "establishment" that will include broad protection on wage discrimination or add it in section 9(1).

In the definition of "social condition" replace the word "illiteracy" with "levels of education and literacy".

Section 2, capitalize the words "Aboriginal Peoples" and add "Inuit".

MR. HAYWARD: The section on the prohibitions, as you know is the most important part of the Act and we want to make sure that we get it right. In Section 5(1) we wanted to add the words "and other analogous grounds". In section 5(1) we want to add that the right or privacy is recognized as a fundamental right in the NWT and that every individual has a right to the respect of their privacy in the following areas - the medical field, work relations, video and electronic supervision, drug testing, intimacy in their home, etc.

We also wanted to add in the same section residency, gender identity, language, family affiliations, political belief, association or affiliation and charge or conviction and remove the rest of the sentence "for which a pardon has been granted".

Section 7(4) and (5) define bona fide occupational requirement and undue hardship as in the Canadian Human Rights Act. This should be either defined here or in the definitions section.

Then we wanted to talk about section 9. For a lot of our membership this is probably the most contentious issue in the whole Act. We believe that the legislation should be proactive and should provide for equal pay for work of equal value, and use point based gender neutral job evaluation plans consistent with the four factors identified in the federal act. The legislation should provide for wage adjustments to be determined, using the proportional value method, and allow for the use of proxy comparisons where necessary. The legislation needs to provide criteria upon which to determine if a group of individual differs from the -- comparators upon any ground of discrimination.

The proposed legislation seriously undermines or eliminates the protection from wage discrimination that residents of the territories currently enjoy under the Canadian Human Rights Act. The federal government and the Legislatures of the Yukon, Manitoba, Ontario, Quebec and PEI have all enacted equal pay for work of equal value legislation in recent years rather than adopting equal pay for equal work legislation.

We also believe that section 9(1) should include a definition for "establishment". Any legislation should avoid the current problems being experienced federally and define the term so as to afford the broadest term available to individuals subject to wage discrimination.

There are a couple of other things. In section 13 we wanted to add the word "hate". In section 14 add "personal harassment" to prohibited grounds in the preamble. Go ahead.

MS. SAMUEL: In looking at the composition and the responsibilities of the Human Rights Commission there were many recommendations. The first one was looking at the composition. -- amending section 16(2) to read "The Commission is composed of seven members, as may be appointed by the Commissioner on the recommendation of the Legislative Assembly and specific sectors." This is the neat part. "Nominations will include four individuals from labour, non-government organizations, the Legislative Assembly, aboriginal and open nominations. The Legislative Assembly, through the nominations of these sectors, will nominate the following commission members: one elder, one labour nominated by the Northern Territories Federation of Labour, one non-government organization, one Legislative Assembly nomination, two open nominations and one aboriginal, which will be the composition of the Commission."

Gender parity will be the goal as much as possible, but understanding seven members.

--- Laughter

That is a joke.

Amend section 16(3) to read: "A person appointed as a member of the Commission must show merit" and define "merit" as having demonstrated capacity and previous experience in analyzing and educating about human rights issues in the cultural context of the Northwest Territories.

They recommended that section 17(3) should be amended to read: "If for any reason a Commission member ceases to be a member before the normal expiration of his or her term, and on the recommendation of the Assembly, and based on the original nomination from a sector, the Commissioner may appoint another person to serve for the unexpired term of that member." That is, refer to the origins of that member's recommendation and ensure that the replacement member is from the same sector. Recommendation to amend section 17(4) -- the second (a) should be deleted and replaced by the previous item. The Speaker should refer to the original sector for nominations for that position, as mentioned in the previous item.

Section 17(5): "A Commission member may be reappointed on the expiration of his or her term, on the approval of the nominating sector, and be appointed to the Commission for a maximum of three consecutive terms."

Section 18(1): "The Commissioner shall appoint one member as the chair of the Commission on the recommendation of the Commission as a whole."

Section 18(2) -- Same as item 18(1): "The Commissioner shall appoint one member as the acting chair of the Commission on the recommendation of the Commission as a whole." The same thing would go for the deputy chair.

Adding to section 20 a part (f): "In consultation, the Commission should develop standards and guidelines for the promotion of human rights awareness in various settings" -- workplaces, commercial accommodation, government, etc. And also that the Commission should monitor compliance and ensure that the resources are available for monitoring activities.

Section 20(c) add in research and add "to develop and conduct public education programs designed to increase awareness of basic fundamental human rights as outlined in, but not limited to, international human rights instruments."

Section 21, it was asked that the timing be changed and that it should be presented to the Speaker in the spring or fall session. There was a concern about losing members falling between sessions and try to make that as seamless as possible and minimize the amount of delay due to falling between sessions when the members of the commission leave.

In section 21(c) add that the number of investigations, enforcement, the rate of compliance, the names of violators, etc., for the previous year should also be reported in the reporting section.

In section 21 change to add that the reporting should be as part of an annual report. The Commission will also submit to the Legislative Assembly a projected work plan and budget for the next reporting period. That these documents will also be presented to the public simultaneously at the same as they are presented to the Legislature.

Section 22 change the definition of "community organization" -- I mentioned that already.

Section 22(4): "The persons appointed or engaged under this section will not be employees of the public service."

Section 23: "The Commissioner shall appoint a Director of Human Rights on the recommendation of the Commission as a whole." Again a successor to the Director of Human Rights would be appointed on the recommendation of the Commission as a whole; and similar provisions in terms of the recommendations of the Commission affecting the identification of the Director of Human Rights.

Again in section 27 add providing public disclosure of the reports and including the names of violators in the reporting procedures for the Human Rights Commission.

MR. HAYWARD: The next section is the complaints section and before examining the details of the process we would like to state that, in general, we like the Canadian Human Rights Commission are opposed to a complaint driven process and advocate the adoption of mandatory compliance legislation. The Commission's experience has been that the complaint driven approach can overwhelm the resources of the investigating body resulting in lengthy delays in the conduct of investigations. However, if the legislation does not change from a complaint driven process then we recommend the following changes.

Section 29(1) should include trade unions and/or advocacy organizations in the ability to file complaints.

Section 30(1) should include a time line of 90 days maximum for the Director to review and inquire into the complaint. You should add an ombudsperson or human rights advocates to assist the public and who shall be at arms-length from the commission and report directly to the Legislature. You should also add that there should be some training of community representatives as human rights advocates so that they can assume this role centrally and regionally. You should add the ability for the Human Rights Commission to fund complainants to attend hearings so that location is not a barrier and to provide translation where needed.

Section 30(2) add language to ensure confidentiality and protection of complainants.

Section 33(1) needs language to ensure that proper settlements are available to all, and that the Director has veto rights if settlements are found inappropriate or inadequate.

Section 41(2) under investigations use stronger language to ensure confidentiality.

MS. SAMUEL: Concerning Part 5, the adjudication and appeal section -- under section 48 the composition of the adjudication panel should include nominations from specific sectors with gender parity where feasible. The sectors should be non-government organizations, labour, Legislative Assembly nominations, open nominations and aboriginal.

Section 48(3) should be changed to read "three years" as a term as five years will be too limiting.

Section 55 add language to ensure that legal counsel that has expertise in human rights legislation will be provided to those individuals who cannot afford it. This counsel will be appointed by the Commissioner of the Northwest Territories.

Section 66(1) under appeal -- add a separate body or tribunal which will automatically deal with wage discrimination issues as a separate matter.

MR. HAYWARD: The last section here under General, create a new section of wording throughout the document around mandatory compliance to ensure proactive measures and to give the commission the ability to do research, investigate, enforce and provide the commission with the necessary resources to do so. Incorporate objectives of the Act in the body of the Act, and not in the preamble, so as to strengthen the language and the commitment.

Section 72(1), Offence and Punishment. Fines need to be increased and go beyond restorative functions to ensure prevention interest. Include some language to ensure that violators are accountable for their actions. You need to add a section to create human rights committees in workplaces above a minimal size whose mandate will be to work towards education and ensuring compliance.

Section 74(2)(a)(iii) change t ensure a time line for investigations, reports and completion of complaints in a period of one year unless an extension is necessary, the Director may do so by making a request to the Commission. That is the end of that. You want to make some closing remarks.

MS. SAMUEL: In conclusion we would like to see the Legislative Assembly take our recommendations into consideration first of all by extending the consultative process. Many of the organizations that we work with, including ourselves, such as the Council for Disabled People, the Deh Cho First Nations, OutNorth, the Status of Women Council and others, did not have the opportunity to consult their membership fully. We are a group of leaders from these organizations that were fortunate enough to be available to participate in the middle of summer in a forum like this. Clearly more time is needed, not only for further consultation but for education of these diverse constituencies.

We would like to reiterate the fact that this presentation was created through the collaboration of numerous groups throughout the NWT, and we will continue to maintain these ties and work to strengthen the proposed legislation and to monitor its implementation. Again we applaud the development of human rights legislation for the NWT, and our hope is that the legislation will create a lasting legacy to benefit all the people of the NWT. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Hayward and Ms. Samuel. We will go to committee members for a few questions. I just wanted to ask for some clarification because I'm not sure I caught it right off the bat and it is with respect to the consultation process. There is a lot of detail in here clearly, and a lot of it speaks specifically to the drafting of the bill. I believe the government has done a couple of rounds of consultation. Did you make these recommendations to the government -- I believe they consulted you -- did you make these specific recommendations to the government. Mr. Hayward.

MR. HAYWARD: We made some recommendations. We did not go into this detail because we didn't pull everybody together. This was a collaborative process and we had 30 different groups come together that weekend. That is where a lot of these recommendations came up. When we met with them, the main thing we talked about was the equal pay provisions. I think that was our main focus. There were a few other little things, but no we didn't go into all this detail the first time.

CHAIRMAN (Mr. Bell): Okay, good. I will go to committee members for questions. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I wanted to follow up on the issue of consultation as well and to make sure that the Federation is aware that it is not the role of the committee and go out and do the public consultation. That is the role of the government, so you are critical of the process the government has undertaken so far. The 10 years I have been elected this has probably been the most consultation I have ever seen the government undertake for any bill. It is now in its third version over two years, and each of those versions has resulted from public comment that has been received from different individuals, groups and agencies in terms of changes that were required. I am a little surprised. I had thought that we would hear that finally the government had done something right because I will tell you that there is no other process I have seen where the level of consultation has been anything like this.

Just the fact that it has taken the government now three years to get to this, and if we slow it down remember the new Legislature coming in is liable to want to start all over again. You don't how much of a change there is going to be next time around. It could be 19 new Members, and if that is the case then it is unlikely that they would be prepared to adopt something that had been started by the previous group. There is some danger in, of course, slowing things down. I just wanted to know if you had examined that when you recommended that we extend this. If we don't put this back to the Legislative Assembly -- or if we do and say, government you have got to go out and do it all over again then basically the whole process has to start again.

The way our legislative system is set up and the way it operates through the process with bills, basically they are looking at redrafting and coming back in another session and introducing the bill through first and second reading, then through the public hearing process that we are undertaking. If you think about when this was introduced. It was introduced in the House in March and we are just now looking at getting it passed in October. If they have to go back and do a consultation process we don't know if we will see it come before the next election.

Personally that scares me. I agree with you that this is extremely important legislation. I think it is too important to let it fall off the Order Paper and maybe not see it come back again. I have been a Member for 10 years and have wanted to see this kind of legislation. It scares me that we could go through the next election and not actually see it.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Samuel.

MS. SAMUEL: Appreciating your comments, we considered that as well quite extensively both in the meeting at the Deh Cho we had discussed it amongst ourselves and at the meeting in August as well. You raised exactly the point that this is a key piece of legislation that is going to be with us in the NWT forever. When it was raised in the forum the response -- I have forgotten who it was -- was that this is too important not to get right. It takes a lot of work to amend legislation and the citizens at the NWT that were at that forum clearly were saying that it is time to take the time now. We recognize the risk and we want this legislation to go forward, so let's do a really good job and an thorough analysis to make sure that our recommendations are noted by the committee.

That being said, there was another aspect that was really an important part to the forum that was overlooked as part of the consultative process that was given. This was said as feedback or rather a commentary that the consultative process that had been undertaken by the Legislative Assembly was missing the element of education, which is critical to human rights legislation. Even in our work, the small bit of work that we did through the forum that we entertained through the NTFL, it was obvious that there was a lot of educational work and information for people to understand what human rights are and what their import is in the NWT. Those were the two key points I wanted to make. It is too important to rush forward and not get it right. Secondly education of people in the communities cannot be overlooked in terms of their providing input into legislation like this.

CHAIRMAN (Mr. Bell): Thank you, Ms. Samuel. Mr. Hayward.

MR. HAYWARD: Some of the organizations that were with us this weekend like the Status of Women are right on top of it and they what is going on, but I was amazed when we were contacting people throughout the NWT and they were saying, is that going through again? They were saying, when are the hearings going to be and we saying, "You were supposed to already put in your papers and your submissions and saying that you wanted..." People were confused. They had no idea that it was going through now.

I am not going to argue that this has not been one of the most thorough processes that you have had. I just wish there was an educational part to this because it seems that a lot of people didn't know what was going on. It was amazing when we had that weekend that people were talking about it. I just think there is a lot still -- maybe there isn't more that could be done but it would have been... I don't have an answer as to how it could have been done but it just seems that there is still a lot missing.

CHAIRMAN (Mr. Bell): Thank you, Mr. Hayward. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I am not convinced that it is easier to hold off legislation and get it right the first time than to amend it. Sometimes holding it off means that you don't get it passed. That is the one thing that scares me. I think from the other presentations we have had during the public hearings there have been people who have suggested that we need to make some changes, but far the majority are saying, "You need to get this passed. You need to get human rights legislation on the books in the Northwest Territories." I think certainly we have heard your recommendation, but we are going to have to balance that with what we have heard from other people, which is, "Make some changes but let's move forward." I think we will have to certainly discuss that as a committee because that is what we have heard.

I think it would be useful to. As you know, the committees of the Legislative Assembly, it is not their function to do education. We do not have the budgets to do that. It is the responsibility of the government. Mr. Haywood, you said you did not have any suggestions for how the process could be done differently, but if in fact people are not finding out about what government is doing, then I think it would be useful for recommendations to be made, if you think there are other processes that could be undertaken. In the future, we need to also be able to suggest to government what they should be doing differently in the future.

Like I say, this has been one of those rare occasions when I have not been critical of the government for the process they undertook because it appeared to me that they were in fact going much farther than I had ever seen them go in terms of public consultation. I look at things like the Wildlife Act...pick any one of the probably 50 acts we have passed in the life of the 14th Assembly and not one of them has come in anywhere near this level of public consultation.

It would be interesting for you to take some time and think about what could be done differently and how it could be done differently and let us know that so we could also pass on some recommendations to the government for the next time around.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Haywood.

MR. HAYWOOD: Well, there are a couple of things I wanted to say. One is we assumed you are all going to get re-elected anyway, Mr. Dent, so...

-- Laughter

I am just saying off the cuff here that I do not have any recommendations as to how it could be done. I am sure Trudy probably does. If we had a team of facilitators going across this territory into the communities, like you and Barb Sanders did, it would be great. It would raise the awareness ten-fold. I mean, Inuvik, there were all sorts of people who...I mean...if you wanted to comment on that.

CHAIRMAN (Mr. Bell): Ms. Samuel.

MS. SAMUEL: Thank you. I just wanted to comment that from one little forum with, I imagine there were 50 to 60 people, there were forums that popped up across the territory. The one in Fort Providence is just an example. There was another in Inuvik, I understand, and there were others as well that were interested but were not sure and the time lines were short. I guess that shows the level of interest.

Again, the recommendations that came from the people who were on the floor, those are their recommendations and we are here to share them with you. I think that is an important thing to put across, that it is a coalition of people of many different backgrounds and many different levels of knowledge about the operations of the Legislative Assembly.

CHAIRMAN (Mr. Bell): Thank you. We appreciate that. Mr. Dent, any further questions on this?

MR. DENT: One final point. There is an awful lot in here and we will take your presentation and go through it in some detail, but in talking about the preamble, "The language should ensure that the NWT commission and the Legislative Assembly are responsible for and role models for human rights." You really mean that they should be, right? Because you sometimes would not want...you would not always want the Members to be held up as examples of outstanding watchdogs of human rights, would you? Given the debate on Bill 5?

-- Laughter

CHAIRMAN (Mr. Bell): I am not sure that needs an answer. Maybe we will move on. Mr. Braden, any questions?

MR. BRADEN: Thank you, Mr. Chairman. My compliments to the federation and your partners for the workshop that you put together in August. I was able to attend for just a portion of the first morning, but I was really impressed, Mr. Chairman, with the level of interest, with the spirit and tone that everybody was there for. It was not we were out to bash something here. We are out to build and see where we can improve it. So that really gave me a lot of encouragement that there are sectors, there are parts of this territory that really do want to be a part of what we are doing here in a true consensus fashion. So I think what you did stands out as a really good example of how society can and should participate and how government should reach out to it.

Also, in that respect, Mr. Chairman, I regret that the decision was taken not to allow the Great Hall to be used for that purpose, but I respect the office of the Speaker and the call that he made at the time. But what I want to do is go back to the Speaker through the Board of Management and look at our policy regarding what is or is not considered an appropriate use of the hall. I will just leave it at that, but you have my commitment that…I hope we do not…that this kind of thing is not repeated again, because I think what you did was indeed legitimate and I will take that up with the board and see if we can get a change.

There is one area in here that I wanted to see if we could get into in a little bit more detail, specific recommendations. In the equal pay area, there is some narrative in there -- this is on page three, Mr. Chairman -- but I do not know if I see in there, what is the core argument that is at the heart of your recommendation that we should have proactive equal pay for work of equal value? Can you give me a sense as to why should this be in place and not the model that the legislation proposes?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Mr. Haywood.

MR. HAYWOOD: This has been an argument that has been going on that the Public Service Alliance of Canada has been putting forward for 12 years, and this is where a lot of our information came from, from them. The gist of it is that they think you need a comparison method between workers, not just you work at the same job and you are paid the same thing. It is beyond that. It is a bigger, more complex issue. It is different workplaces. I do not have all the background to go into all of the details of this. I do not know if Trudy does. We have some background here from the Public Service Alliance. I do not know if you want to read that out or…

-- Interjection

CHAIRMAN (Mr. Bell): Ms. Samuel.

MS. SAMUEL: ...has long recognized that equal pay for equal work legislation addresses only the most obvious cases of gender-based wage discrimination and more importantly, that such legislation provides relief from wage discrimination to only a limited portion of workers adversely affected by discriminatory wage practices. It is a recognized fact that society has actively and passively structured employment practices in a manner such that males and females tend to be segregated into different types of work.

I think that is the crux of it.

In turn, the societal biases, which favour males over females, have resulted in work perceived as women's work has been paid less than the work performed by males. Moreover, this is systemic rather than an isolated situation.

Does that clarify what we are talking about when we say equal pay for work of equal value? Thank you.

CHAIRMAN (Mr. Bell): Thank you, Ms. Samuel. Mr. Braden.

MR. BRADEN: I think I have my head around the difference in concept, if you will. I am just...I know how contentious this is in some people's minds and I just want to make sure that I understand the motive and the strength and the power behind the argument that you are giving us here, to say well, no, we should take this one model and replace it with another one. And the one that you are proposing, of course, is far greater scope, depth, and complexity. This is the information that we have been getting. As well, where other jurisdictions have adopted the equal pay for work of equal value proposal, we are also advised that compliance, especially among the private sector, is really very, very low. There is great difficulty in getting employers sort of accept or buy into these concepts and go through the motions of a job description, proposal, evaluations and all these other things. There is a large, large commitment, I guess, taken on that this is going to be done. Other jurisdictions in Canada have shown that there is large difficulty with it.

Again, I ask, why should we pursue this in the face of real difficulties that others -- with deeper pockets than we have -- why is it that we should continue to pursue this?

CHAIRMAN (Mr. Bell): Mr. Haywood.

MR. HAYWOOD: I guess my answer is a little simplistic, but compliance will be zero if it is not put in. It may be low in Ontario and Quebec but it will be zero here if we do not put it in. So why should we put it in? Because we want to do it right. You are creating legislation -- do it right. Do it right from the beginning. Do it the correct way. If some companies are not going to comply with it, well, that is another stage here and we have to work on that. If there is going to be a funding issue, then it is a funding issue and we work on it, but you do not get around it by just saying let's not do it.

CHAIRMAN (Mr. Bell): Thank you, Mr. Haywood. Mr. Braden.

MR. BRADEN: If I may, Mr. Chairman, I appreciate that. I am not going to dwell on that. It is not the committee's job to debate or argue, but I wanted to see if I could draw a couple of things out.

One more point, Mr. Chairman, specific to an item raised on page number six, one of the bullets suggests, under section 30(2), that language should be added to ensure the confidentiality and protection of the complainant. I think this is in the context of the public nature and the transparency of the commission's work, that it should be required to document and report to the public what is going on.

I wanted to ask why is it that you only suggested the confidentiality and protection should be afforded to the complainant. Was there some reason for not including the…how do you say, the party complained of? Because there may be a false accusation and it does not take much to appreciate what damage can be done when false accusations are rendered, this kind of thing. Is there a reason or should we include equal protection for all parties involved in a complaint?

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. Ms. Samuel.

MS. SAMUEL: I would just answer that simply that was the orientation of the group making that recommendation. It put itself into the position of the complainant in that case and it would not be…it would not affect this recommendation adversely if the same protection were accorded to the complainee -- I am not sure how we are going to term that, but yes, no problem.

CHAIRMAN (Mr. Bell): We are running a little short on time here, Mr. Braden, and I will just ask Members, since we have several people who want to ask questions, if we can keep the questions fairly concise. Mr. Dent.

MR. DENT: On page three of your brief, there is one line in there that says "The proposed legislation seriously undermines or eliminates the protection from wage discrimination residents of the Territory currently enjoy under the Canadian Human Rights Act. I do not believe that is accurate. I would just like…what makes you believe that? As I understand it, nothing can take away -- we cannot do anything that will take away coverage from people who are now protected by the CHRA, nothing this Legislature can do. So GNWT employees will continue to have protection from the CHRA, as will those employees of federally regulated businesses across the Territories now.

This bill will impact those who are now protected by the Fair Practices Act, so where did you get this from, I guess is the question?

CHAIRMAN (Mr. Bell): Mr. Haywood.

MR. HAYWOOD: Legal minds, that is who we got this from, at the Canadian Labour Congress and from the Public Service Alliance of Canada, who have looked at this and looked at this a lot.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: Constitutionally, we may wish that we had that power, but we do not. We are assured of that. Maybe we could ask our legal counsel to confirm.

CHAIRMAN (Mr. Bell): Sure. We will go to Ms. Samuel and then to Ms. Peterson. Ms. Samuel.

MS. SAMUEL: I think your point raises a really important consideration because of the inter-jurisdictional complexity of this legislation, which is one of the most significant challenges in explaining it to other people and doing the education on human rights. I mean, that does not explain why it is here, but I think you have raised a really important point that it is good to flag to the community, with respect to the relationship between the different jurisdictions, and that it was not clear from reading the legislation how that would work to the people who were reading it and reviewing it.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Certainly with respect to federally regulated employees, I think they will remain under the Canadian Human Rights Act. In terms of GNWT employees, I think that is likely the case as well. There are some issues around the section 66 exemption, so much depends on whether that exemption is granted or not, how broadly this legislation will apply. But I agree with Mr. Dent in terms of his analysis of things at the present time.

CHAIRMAN (Mr. Bell): Thank you. Mr. Dent.

MR. DENT: Thank you. One other point that may be worthwhile making is that aboriginal governments will not be covered by this act either, because they are under the Indian Act, or under treaty, which are constitutionally superior to anything we can do. So band governments and any other subsequent form of aboriginal government that is formed would not be covered by this act at all.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Ms. Samuel.

MS. SAMUEL: You have mentioned, the appeal council has mentioned that the current legislation for the Canadian Human Rights Act applies to federal employees, and I believe you said that this legislation would apply to Government of the Northwest Territories employees, or something to that effect. Is that correct? I guess it was a discrepancy in going from being a federal employee to being a territorial employee that caused the difference. If this level of equal pay for work of equal value is not in place for GNWT employees and it is for federal, I think it was the flipping back and forth that was difficult in inter-jurisdictional.

I just want to raise as well under the First Nations Governance Act that is proposed before the federal government right now that the First Nations bands would come under the Canadian Human Rights Act as well. That was another level. Again, this proposed legislation that is on the federal table, that further complicated the education and bringing people up to speed on what human rights and the state of human rights were in Canada that we go into.

CHAIRMAN (Mr. Bell): Thank you, Ms. Samuel. Anything further on this, Mr. Dent?

MR. DENT: Ms. Peterson mentioned perhaps that there might be section 66 exemptions sought. It would only be if that were granted by the federal government that this would apply to GNWT employees, otherwise the equal pay for work of equal value still would apply to GNWT employees. The advice that we have is that unless our bill included the equal pay for work of equal value, that that section 66 exemption is unlikely to be granted.

So chances are that…our advice is, anyway, that GNWT employees will continue to be protected by the CHRA, whether we pass this bill or not.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. I have a couple of questions before turning it over to Ms. Peterson, and specifically to pay equity. You refer to other jurisdictions that do have pay equity, and there is not much discussion here about who you envision this would apply to, both public and private service, I assume. What about the size of private sector firms that would be asked to comply? Have you given any thought to that? Ms. Samuel.

MS. SAMUEL: No, we did not discuss particularly the size.

CHAIRMAN (Mr. Bell): Mr. Haywood.

MR. HAYWOOD: I thought there was…sorry, not…

MS. SAMUEL: We did discuss the size with respect to building education committees in workplaces, but we did not discuss the particular size in which the equal pay for work of equal value provision would be applied.

CHAIRMAN (Mr. Bell): I think some of the problems as have been raised by the private sector and other jurisdictions is that they are being asked to do something that is too onerous for a business of their size. If you have a six-person bakery, is it reasonable to expect that they are going to be able to write job descriptions and evaluate the different jobs in the firm? I think there was some debate about this but I was just trying to get a sense of whether or not you discussed that at any length.

The next question I want to ask you, you made the point that you felt it made sense to have a separate commission for wage discrimination. I am wondering, as other jurisdictions that you mentioned that have pay equity have, why would you not want to see pay equity dealt with then in separate legislation as most of these jurisdictions have done? Mr. Haywood.

MR. HAYWOOD: You know, just before you were using the example of the bakery, a six-person shop or four-person shop - I agree, there has to be a minimal size, right? But if you have a bakery at the Co-op, that is totally different. If you are in a workplace where there is 120 people, you are right. Size has to be considered. The ReddiMart, the corner store that has four or five people in it, yes it is different.

The Legislature has to come up with those recommendations for the sizes. Five or six people, sure, you are right. The second part of the question…

MS. SAMUEL: Concerning wage discrimination.

CHAIRMAN (Mr. Bell): Ms. Samuel.

MS. SAMUEL: Why would there be?

CHAIRMAN (Mr. Bell): Why separate pay equity legislation? Why not?

MS. SAMUEL: This is not one that I have dealt with extensively. Bob.

MR. HAYWOOD: I am just going to ask you to re-ask the question.

CHAIRMAN (Mr. Bell): You have mentioned other jurisdictions that have true pay equity, as opposed to what we are talking about, equal work for same or similar. In these other jurisdictions, I think most of them have separate pay equity legislation. You are talking about a separate commission for wage discrimination. Why not also advocate that there be separate pay equity legislation then if that is the… Mr. Haywood.

MR. HAYWOOD: We talked about that. I know that the PSAC has talked about that. Actually I think in the first round you brought up a lawyer, I can't think of her name right now, but she met with us and we talked about this too, how Ontario has that and whether we should go with it or not. We discussed it and decided that no, they did not see that as something that should happen here.

CHAIRMAN (Mr. Bell): I just wanted to ask you one last question, I am cognizant of the time. It is just in relation to the make up of the commission. You proposed that gender parity, seven members. You have named some sectors that should be represented. One of the concerns that has been raised in some of our consultation was that people who are on this commission are there and have a public education role and they are there to represent all of the constituents of the Northwest Territories, all residents. We are not there to act as a lobby for one sector.

How do you sort of envision this role? I am wondering how you see this working and why you suggested the specific sectors be represented. If you do not see that may cause problems where certain groups that may fall under the prohibited grounds are typically not represented because of the limited number we can possibly have. Ms. Samuel.

MS. SAMUEL: The specific issue that they were speaking to was the composition as is described in the current legislation. The recommendation underlines the desire of people who were in the room from the different sectors to participate in the nomination process and for the nominations to be broadly based, coming from the not-for-profit and voluntary sectors.

Your question with respect to overlooking certain sectors and the government often being in a situation - I believe you are intimating that the government is accused sometimes of not including different sectors. Is that correct?

CHAIRMAN (Mr. Bell): Yes and also if we have a representative, one from labour, one from a certain NGO, is it there role to be there and advocate on behalf of the group they represent or are they there to represent all Northerners?

MS. SAMUEL: No, they would be there to represent all Northerners. It was really about creating a diversified composition for the commission.

CHAIRMAN (Mr. Bell): Thank you. I will go to Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I will be quite quick because I know we are short for time. A couple of detailed questions if I might. I am not sure I understood some of your recommendations. You indicated that in the report to the Legislative Assembly the names of violators should be disclosed in that report. That is over and above the public register that is maintained by the commission in terms of the complaint? So you wanted that in addition to the public register? Do I understand that correctly?

MS. SAMUEL: Yes.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: I did not understand the wording change that you were seeking with respect to section 22, subsection 4 of the act. Maybe I am not reading it correctly but it did not seem to be a very significant change in wording. I am wondering if you can explain that to me.

CHAIRMAN (Mr. Bell): Ms. Samuel.

MS. SAMUEL: Section 22(4) I believe our amendment - they are not and they will not be. It was a future reference. I believe that that is a typo. That is all. that is semantics about future reference but it is the same thing.

CHAIRMAN (Mr. Bell): Thank you, Ms. Samuel. Ms. Peterson.

MS. PETERSON: You also recommend that section 9(2) be eliminated in its entirety. Now just for clarity, that is the section that says it is not discrimination to pay differential amounts based on a seniority system, merit systems, compensation that recognizes regional differences in cost of living and so on. You are asking that that section be taken out?

CHAIRMAN (Mr. Bell): Mr. Haywood.

MR. HAYWOOD: But add in the recommendation. The two go together. If you are not going to put in the part we are recommending then what we were told and what was at this meeting then do not delete 9(2). But if you put in what we are asking for then delete it.

CHAIRMAN (Mr. Bell): Just for clarification, what you are asking for in which specific instance so we are clear?

MR. HAYWOOD: In section 9 (1). If you put in what we are asking for in 9(1) then delete 9(2). If you are not going to put it in...

CHAIRMAN (Mr. Bell): We will have to discuss that and see if we are clear on that. Ms. Peterson.

MS. PETERSON: I just want to try to clarify it just a bit more while I have you in my hot little hands if I can. I understand what you are saying on the pay equity issues generally. But if 9(2) is taken out, even under a pay equity regime, there could be a complaint for discriminatory practices based on differential pay on merit, seniority, regional costs of living differences.

So, if you take that out, irrespective of whether you have a pay equity regime or not, those could constitute potential grounds for complaint, I would think. If it is not there saying that they are not grounds for complaint, the argument is that they are grounds for complaint.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Haywood.

MR. HAYWOOD: I do not have a lot to say about that because you are certainly right. It sounds right to me. I will leave that.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: I will have a closer look at that. I think I understand part of what you are trying to say. Lastly, just a question on pay equity generally. I understand your submission on that as I think the committee does as well. I think one of the concerns is, is there a way to effectively achieve equity in remuneration of employees?

I think some of the concerns were that pay equity regimes in other jurisdictions, while they have the appropriate goals, the mechanisms of implementing them have been problematic at times.

If the assignment of values to different jobs is in itself ill-advised then it affects the viability of the pay equity system. There are a number of issues associated with that. Has your organization, with other people, discussed any other means of achieving that goal other than using something that has been transferred from another jurisdiction?

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Mr. Haywood.

MR. HAYWOOD: Not that I was part of.

CHAIRMAN (Mr. Bell): Ms. Samuel.

MS. SAMUEL: In our analysis we did not get into that level of analysis in our conversations. However, it did come out that that is not sufficient grounds for lowering the standard. It is the same problem that we end up with when we discuss pay equity time and time again. However, the fact that the goal is the right one is where the participants stood.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: That is good, thank you.

CHAIRMAN (Mr. Bell): I would like to thank you both for the presentation. Clearly there is a lot of detail that we have to digest and go through here and be able to reference the points you are making with the actual bill. We assure you that we will take the time to do that. We appreciate all of your comments and again, thank you for taking the time to come here and present to us today. We appreciate it.

MR. HAYWOOD: Thank you. We appreciate being here. Thanks very much.

CHAIRMAN (Mr. Bell): I think we will take a five minute recess and then we will be joined by Mr. Antoine, Mr. Gargan and I believe Ms. Norwegian who are representing the Deh Cho First Nation. We will say in about five minutes then, at about quarter to the hour. Thank you.

-- Break

CHAIRMAN (Mr. Bell): We will come back to order. Committee members again are, for the record, Mr. Dent, Mr. Braden, I am Brendan Bell. We have soon to join us committee staff Mr. Inch. Here with us is Ms. Fenney, Ms. Peterson and we welcome Gerald Antoine, Sam Gargan and Angela Norwegian on behalf of the Deh Cho First Nation who will be making a submission now. The format that we have been using is that you will make your submission. If you have any sort of copy for us that is fine, we can get it photocopied. I do not know if you have already talked to the clerk about that.

If you don't and you are just going from your own notes then that is fine as well. Hopefully we will have some time to be able to ask you points of clarification or some specific questions and see if we can figure out where you are coming from on a lot of these points.

I do not know who will begin, but whoever it is, please begin when you are ready.

MS. NORWEGIAN: We will start with introductions and a little bit of background on how I became interested in the Human Rights Act. We were invited to attend a forum in Yellowknife put on by the Northwest Territories Federation of Labour and it was the first time I heard about Bill 1. I was concerned that there was not enough aboriginal representation at this meeting, so of course I brought it to my leadership's attention. I took it upon myself to hold a small meeting in Fort Providence and it consisted of a small number of chiefs and concerned citizens.

I feel that it was not -- we did not receive enough consultation and there was not really a whole lot of education on it other than private organizations that extended invitations. I just feel it should have been more -- there should have been more information made available to us.

MR. ANTOINE: My name is Gerald Antoine. I am a Dene from Rabbitskin River which is 24 miles up the Deh Cho River from a place called **inaudible** which is the administrative centre of Fort Simpson. I am a former chief of the **inaudible** First Nation. Also, a former grand chief of the Deh Cho First Nation. During my tender I had the opportunity to serve the communities of Fort Simpson and the citizens of the Deh Cho.

One of my tasks was to travel to Geneva, Switzerland to attend a session of the working group. At that particular time I introduced the Deh Cho to the rest of the world and to investigate first hand the movement of indigenous people of the world. I just wanted to let you know that I would be addressing the committee members on the topics of human rights in terms of what is being done to indigenous people and to present the position of the indigenous people as it stands today. I would like to end my introduction and introduce the chief.

CHAIRMAN (Mr. Bell): Thank you, Mr. Antoine. Mr. Gargan.

MR. GARGAN: Thank you. I know most of the Members here. My name is Samuel Gargan. I have been in politics most of my life. I have worked with the Dene Nation, I was an MLA, a mayor and now I am a chief, in that order.

It used to be, several years ago, I have always had an interest in **inaudible** but one of the things that really interested me was when I used to hear this ad on T.V. all the time talking about **inaudible** women. I fully agree with her when she says that it is against human rights to discriminate against gays and lesbians, but not here. We all felt that we do not need the legislation if we are not discriminating against gays or lesbians. That is the message I got from that T.V. ad that was always done.

The other issues, in 1986 there was - Richard Nerysoo was the Minister of Justice at that time, he introduced that same type of bill. If you look back that far to the 18 aboriginal Members of the 24 Members there, I think there was a collective unity when at that time the aboriginal Members said that there was no way they were going to support a bill like that. Absolutely not. So it did not even go to first reading at all, it just died right there and then.

I think the circumstances are different now. I just thought maybe I would bring that point out in my introduction. I think Angela is the one who is going to be doing most of the presentation.

CHAIRMAN (Mr. Bell): Thank you, Mr. Gargan. Ms. Norwegian.

MS. NORWEGIAN: A couple of my specific concerns were - I was just curious as to why there were only three communities that you did public hearings in out of 33 communities in the Northwest Territories. I mean really, that is only two out of six regions in the Northwest Territories. I am sorry, I am really nervous.

CHAIRMAN (Mr. Bell): Take your time.

MS. NORWEGIAN: Fort Simpson, while I invited the committee to come to Fort Simpson the day after your news release came out and I realize that it was short notice, but the interest was there on behalf of the Deh Cho First Nation and the ten communities in that region.

CHAIRMAN (Mr. Bell): Maybe what I can do for you is have the clerk outline the process a bit and talk about where we took it, when we took it over to a committee, our timelines as far as getting it back into the House, and talk about possibly the two years prior to our getting this as a committee and the consultation that the government had done at least with your group -- at least you are on the list of stakeholders. I am not sure if they actually met with you but I believe you are. Maybe I will ask the clerk to give us a rundown again because he will have a better handle on the dates and the stakeholders that we contacted and the number of times we requested submissions. Mr. Inch.

MR. INCH: Thank you, Mr. Chairman. In fact Bill 1 received first reading in the Legislature, and second reading, on February 22nd of this year and was referred to committee for review.

Subsequent to that the committee received a briefing from the department on its consultations over the previous two years and we received their list of stakeholders and the people they had talked to about the bill in that time. So we assumed that it would be in our best interests to contact those same stakeholders and invite them to make comments on the bill.

I think it was the committee's wish to ascertain whether or not there was further interest in joining a consultative process, a public hearing process if you will. The letter was sent out to all those organizations, about 200 of them in April of this year. We received, I believe, one or two responses from Yellowknife organizations to that letter itself and none from outside of Yellowknife in response to the letters. I am not sure what was supposed to happen after that but at the same time a round of advertisements in all the northern papers outlining process. I have a copy of it here somewhere. It also called for anyone who was interested to contact our offices to receive copies of the bill and the plain language summary that was prepared, just to see if there was any interest out there.

The committee wanted to wait before it announced where its public hearings would be to see where the interest was, to see whether there were any communities that wanted the committee to travel to their community. In fact, no such requests were received until such time as I spoke with you, Angela, in terms of your request for the committee to visit Fort Simpson.

It was difficult in terms of planning the public hearings in that the committee had no indication of where they should go. So, in fact, the decision was made to go north and south, one community in each and hope that people would come out to make presentations on the bill.

I probably left out the part about the second round of ads in July, but again we did not get any response to those. We had a witness register that we had established and by and large it was Yellowknife organizations representing larger segments of the population that responded. We had about 15 witnesses whom we have heard over the past two days who registered and made presentations to the committee.

I don't know if that covers everything, Mr. Chairman, I could probably go on for a while and I don't want to take up too much time. Basically it has been a process where with the lack of resources that a committee would have in terms of being able to conduct workshops in communities and that sort of thing, that has never been the case with our legislative committees and our process. Every effort is made to get the word out that the committee has the bill and is seeking input of Northerners.

Like I said, through ads and through letters to community leaders, aboriginal organizations, other identified stakeholders, in this case over 200 of them, and beyond that, Mr. Chairman, there was very little if any response. Pretty much that is the process until we find ourselves here today.

CHAIRMAN (Mr. Bell): Thank you. I would also add that in the two years prior to us getting the bill the government came forward with one version of the bill, went out for rounds of consultation on the basis of the input, then made changes and came back with something that was significantly changed. There have been further changes from that and we are almost on, I believe, the third version of the bill.

As a committee, as you have heard, it is really the mandate of the government to go out and to the education. We do not have the means or the mandate to do that. Our role is to solicit input and feedback from the North at large on how they feel the bill is going to serve them. That is what we have been trying to do.

In terms of travel, it costs a lot of money to take the committee on the road. We wanted to make sure there would be interest in the communities we travelled to. We had several discussions and on the basis of the lack of response, really the only community that seemed to make sense or that could be financially justified was Yellowknife. We did not want to leave it at that so we decided to go north and south as well despite the fact that we really did not have a response from those communities. I think we had one respondent from Fort Smith, who ended up presenting here in Yellowknife at any rate.

Just to make sure that we didn't exclude people we wanted to make sure that if people called at the last minute we would agree to bring them into Yellowknife or to one of the other centres so that they could make a presentation to us. Maybe that gives you a little bit of an idea about the consultation that we have attempted to undertake. Ms. Norwegian.

MS. NORWEGIAN: Do you know what actions were taken to educate the public on Bill 1? You said that it was the government's responsibility. I want to know if you know what they did in terms to do that.

CHAIRMAN (Mr. Bell): As far as how they contacted the stakeholders, we have been given the list of stakeholders that they contacted. I believe they had focus group sessions that used a facilitator. I am not sure other than we could certainly ask the Minister of Justice for a briefing on that.

MS. NORWEGIAN: And it was announced to the public?

CHAIRMAN (Mr. Bell): ...and an insert in all of the northern papers, and I believe that was the method of education they undertook. Ms. Norwegian.

MS. NORWEGIAN: So it was just the stakeholders that were educated and there was an insert in the newspaper. Is that correct?

CHAIRMAN (Mr. Bell): I think the stakeholder list had some 200 organizations across the North including all of the aboriginal governments, I believe, yes.

MS. NORWEGIAN: And all participated?

CHAIRMAN (Mr. Bell): I doubt that all participated. I am not aware of which ones did or didn't participate, or did or didn't respond to the government's request to meet.

MS. NORWEGIAN: Okay. Is there anything you wanted to add?

MR. ANTOINE: One of the things that is pretty obvious was in terms of education, and I wanted to just address I guess the presentation as a concerned Dene. I have a number of documents that I wanted to give to the committee in the spirit of education. In my opening remarks I had mentioned that I would like to address the committee members on the topic of human rights in terms of what has been done to indigenous people and to present the position of the indigenous people as it stands today.

In terms of Bill 1 -- it used to be the Fair Practices Act -- and from the Fair Practices Act to human rights it is a real gigantic step. When you are talking about human rights you also have to take it in the context of what has been happening in Canada and also the rest of the world. I understand that any territorial legislation cannot be stronger than the federal acts. I understand that. As an indigenous person, even the federal acts do not do enough for us as indigenous people. If there is a territorial piece of legislation being proposed that talks about human rights, it is very limited. I understand that.

With that, when the United Nations was formed in 1947 after the Second World War the human rights issues were raised in the context of Western legal thinking, which stressed the rights of the individual over the rights of the collective. I wanted to state that because one of the things that as a Dene person we always had mentioned collective rights and it has to do with the land. Even the word "Dene" -- if you take all the elements into it, including the spiritual element to it, Dene if you literally translate it -- "De" means river and "ne" means land. So if you put them together it means the land of the river. If you take the people that live that particular way of living, their way of life, it means that we are of the land of the river.

The word "cho" -- people says that means big but it means ever beyond that. It means sacred. So if you look at the word "Dene" you know it means we are of the land with a sacred river. The reason why we look at it that way is that if you look at our bodies, about 80 percent of our bodes is water, so water is very essential to our very existence. If we look at the land similar to that, our rights come from that because we are of the land of the sacred river. Even the Dene Declaration made in 1975 mentions that. Even the Dene government past and future that was made in 1985 it also mentions that. So this is not something new. This is not something that we are saying that is new. We have been saying that constantly year after year at meetings, and we want to be recognized. We want it to be recognized that we have this and that we can contribute to the whole world, the whole human kind.

Indigenous peoples were excluded from the United Nations process until the late 1970s when they insisted on representing themselves. As a result of the indigenous peoples pushing at the United Nations, the Commission on Human Rights decided that a document should be produced to protect the collective rights of indigenous peoples.

Since indigenous peoples concentrated around the collective rights to lands and resources, there were no instruments drafted at the United Nations that protected these collective rights, and Canada is a member of the United Nations and the territorial council is directed by Canada through the NWT Act. It took a number of years of fighting for the draft Declaration on the Rights of Indigenous Peoples to be approved. I would like to present a copy of the United Nations draft Declaration on the Rights of Indigenous Peoples. When the draft was finished by the working group on indigenous peoples it was passed up to a sub-commission. The sub-commission approved the draft. It has to be remembered that the sub-commission is comprised of human rights experts.

Now the draft moved up to the Commission which is comprised of nation state governments, Canada being one of them. The nation state governments led by Canada, the United States, Australia and New Zealand opposed the draft moving forward for acceptance. The draft Declaration on the Rights of Indigenous Peoples were the minimal standards that the indigenous peoples of the world are going to accept. However, we had nation states, Canada being one of them, that do not want to move it forward. The United Nations have not passed it yet, but it is up to the Assembly of the Untied Nations. It is at that stage now.

One of the things you have probably heard before is the indigenous peoples right to self determination. In 1975 the Dene Declaration was passed at Fort Simpson and it was passed unanimously by the Dene descendents and their leaders. I would like to present this to the committee.

The other thing is the collective right to the lands and resources. We mentioned that in here, also in the testimonies that we made during the Paulette case and also the Berger Inquiry that happened in the early 70s. We have stated those things. We also mentioned collective rights to education, health and other rights through those processes, and we have been saying that constantly over and over again -- educating people, letting them know. We even did a trip through Canada letting them know what was going on. We also took trips to Europe to let people know what was going on.

The other thing is the recognition of treaties. We have a treaty, which is Treaty 11. We want that to be recognized as an international instrument, but it is still not doing anything. One of the instruments that they put it under was the Indian Act, and the Indian Act is the one, I guess, that is a way to control indigenous peoples here. They categorize our people -- Indians, Status, non-Status and Metis. That is not how we look at ourselves, yet these things are instruments that are keeping us apart.

This is where the big problem develops in relation to the human rights statute proposed by the GNWT. It does not recognize the treaties as a source of rights for the Dene and non-Dene because this treaty not only covers rights for the Dene people, it is rights for non-Dene people. In addition, individual rights destroy the fundamental aspects of indigenous peoples rights to their lands and resources, and that is a concern.

When Canada was patriating the Constitution in 1981 there was a big fight to have treaty rights protected, which are included in section 35 of the present Constitution, which is outside the Charter of Rights and Freedoms. The Charter of Rights and Freedoms only protects the rights of the individual, not the collective rights which are explained in section 35. As a concerned Dene I do have concerns about this bill because it doesn't take into consideration these things.

As I mentioned, fair practice is very simple, and then human rights is a real large envelope and we need to take into consideration these things that I mention.

I also have a document here called The Universal Declaration of Human Rights that I wanted to also present to the committee. One of the things that we talk about is educating. I think in my presentation I explained that the Dene have been educating people, a lot of you, even the people that had been on the territorial council here before. We have been educating them, hey look there is something that we need to resolve here, yet it is not done. It is coming to a point where those rights are being deteriorated by agreements -- not treaties. People like the federal Minister calls it modern treaties, but it is not a modern treaty. It is an agreement. It is not a treaty. In the Deh Cho and also the Akaitcho they are saying that. There is a treaty and there is a relationship that we have that we need to implement, and it is not being implemented. It is being deteriorated by a lot of legislation.

Even this legislation is again deteriorating. It is going to have implications. That is what I am saying, and I am saying that you have to take into consideration these things. The council here has been in existence since 1888 through the Act of Parliament and it is to administer the Northwest Territories, which was the largest body in Canada. Now it is only down the Mackenzie Valley, and it still has not accepted what the indigenous people in the Valley have been saying. I think that kind of treatment is discrimination. That is something that the House here has to really take a look at.

Human rights here is regard to resolving the Crown First Nations relationship and taking into consideration these things. That is basically what we have been attempting to do. That is just something that I wanted to share with you, to pass on these things, because whatever we do now has implications. We need to really look at this thoroughly. As an example at the United Nations the indigenous people took it upon themselves to be represented, and indigenous people in the

Northwest Territories have to do the same thing and you have to work with them so that we can get on and have a bright future.

I know there is a lot of in-fighting going on and I don't think those kinds of things can ,continue. If we are talking about human rights that is what we are trying to do, resolve the relationship. Let's deal with each other fairly. I think that the message I have been hearing is let's do it once and for all, and I am saying, "okay let's do it once and for all", but take it into the bigger context, even supporting us at the national level and the international level." I think Bill was saying this morning that it is an opportunity to develop a model for the rest of Canada, and I think that in the previous statements when the House was sitting people were saying that we should try and be an example and in terms of human rights let's be an example. Mahsi.

CHAIRMAN (Mr. Bell): Thank you, Mr. Antoine, I think you make some very good points and have given us a lot to think about and to talk about. I can go to committee members for questions unless, Ms. Norwegian, you would like to continue. Ms. Norwegian.

MS. NORWEGIAN: Yes there were a few more things I wanted to add.

CHAIRMAN (Mr. Bell): Please do.

MS. NORWEGIAN: The Deh Cho process -- as you all know the Deh Cho is working towards self determination, and I just want to know are these human rights going to apply to aboriginals after this -- non-aboriginal, Metis -- who is it going to affect? I don't know, but I am curious. Another thing was collective rights. I think a band employee's rights are just as important as somebody who is working for the government or a private organization, and it is not mentioned in there at all.

CHAIRMAN (Mr. Bell): Maybe I will take this opportunity to allow Ms. Peterson to give us a bit of an explanation on this because you are right, there is an exemption for First Nations governments to not have to adhere to this legislation in certain areas, but I would like to get Ms. Peterson to discuss that. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. I am sorry, I just missed the very last thing that you said that wasn't mentioned at all. Could I just get you to repeat that since I didn't hear it.

CHAIRMAN (Mr. Bell): Ms. Norwegian.

MS. NORWEGIAN: Certainly. Collective rights -- I think a band employee's rights are just as important as somebody who works for a private or a government organization, and it is not mentioned in there.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. Do you mean an individual band employee?

MS. NORWEGIAN: No, an individual person.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: Thank you, Mr. Chairman. The whole sort of matching of jurisdictions or how they sort of play out is a bit complicated, but I think what we anticipate is that for First Nation governments acting in areas that they have negotiated to be their authority and carrying out their government, they will not be subject to this territorial piece of legislation. They are distinctly federal in nature because of the nature of their relationship with the federal government as a nation, and those issues would have to be resolved at the federal sphere. That being said, aboriginal persons as individuals are, like all other individuals in the territories, protected from discrimination on the grounds set out in this Act. For example, an aboriginal person who sought housing in Yellowknife and felt they were discriminated against in the provision of that housing to them on the basis of them being aboriginal would be entitled to lay a complaint to this Human Rights Commission established by the territories to deal with that issue. I don't know if that helps or not.

CHAIRMAN (Mr. Bell): Thank you, Ms. Peterson. Ms. Norwegian.

MS. NORWEGIAN: Is this clearly defined in Bill 1, that if a band staff person is violated or whatever they have to go to the provincial and make their complaint? Is that how that works?

CHAIRMAN (Mr. Bell): Thank you, Ms. Norwegian, it would be federal in that situation. Ms. Norwegian.

MS. NORWEGIAN: Is that in the bill? I don't remember seeing it.

CHAIRMAN (Mr. Bell): Ms. Peterson.

MS. PETERSON: No it is not set out in the statute and the one thing the bill says is in section 2 which respects existing aboriginal rights and treaties, and bands have always had a direct relationship with the federal government, so it is not something that this particular legislation could even try to regulate.

CHAIRMAN (Mr. Bell): Thank you, but I would also add that the Canadian Human Rights Act has parallel provisions. All these prohibited grounds for discrimination also found in the federal legislation would apply in those situations so there wouldn't be any diminishment of rights based on the fact that it is a different jurisdiction. Ms. Norwegian.

MS. NORWEGIAN: I just have one last thing to say and then Gerry and Sam can finish. Working with the Human Rights Act, it feels like a whirlwind, it feels like someone is trying to pull a fast one on me. This is how I feel. I only really got involved within the last two or three weeks and I feel like I am getting a take it or leave it attitude. I think we should really take more time just to educate the public. I really feel for my community members because I really don't think they know a lot about the human rights acts. Just contacting my leadership to attend this meeting in Fort Providence, a lot of them didn't know what was going on with this bill. I am concerned.

CHAIRMAN (Mr. Bell): Thank you, Ms. Norwegian, and we certainly hear your concerns. We want to make sure that people are adequately consulted. I hope that you don't feel that we have been overly defensive. I guess we have had a process that we could deal with and we have done our best as a committee to take it when the ball was turned over to us, and try to go out and solicit as much input as possible. But you are right, it is possible that people didn't understand that this was going on and that we need in future to talk about different methods of consultation and different methods of contacting communities adequately. I think that is certainly something this committee will want to discuss. Maybe I can go now to Mr. Gargan or Antoine, if you have further comment. Chief Gargan.

MR. GARGAN: Mahsi, Chairman Bell. (Translation not available)

Mr. Chairman, I have several documents that I would like to offer you. I would like to first of all thank you for allowing us some time to bring forth some concerns that we have. The other thing we would like to bring forth is that I am a member of the Deh Cho government and as such I would like to give you two documents. The first one is with regard to the Deh Cho First Nations Framework Agreement, and also the Deh Cho First Nations Interim Measures Agreement. Both documents were signed by your government too, by the federal government and by Deh Cho First Nations. These are the documents.

I would also like to offer you two other documents. One is a Motion by the Deh Gah Got'ie First Nations which says that:

> WHEREAS the Deh Gah Got'ie First Nations continue to exercise for the record, Mr. Chairman, their inherent right to self determination since time immemorial;
>
> AND WHEREAS as First Nations we have our own culture, language, political systems and a traditional territory;
>
> AND WHERAS the Deh Gah Got'ie First Nations believes that such blatant bias is evident in our daily lives through the services that directly and indirectly affect us;
>
> AND WHEREAS Canada recognizes the inherent right of self-government as an existing aboriginal and treaty right, recognized and affirmed by section 35 of the Constitution Act 1982;

> AND WHEREAS there is a proposed draft Declaration of the Rights of Indigenous Peoples at the United Nations level;
>
> NOW THEREFORE be it resolved that the Deh Gah Got'ie First Nations will not support proposed Bill 1, Human Rights Act.

This was passed unanimously and is dated yesterday.

I would also like to give you a Motion done by the Deh Cho First Nations. We had a tele-conference today and this Motion was done today.

> WHEREAS the Deh Cho First Nations Declaration of Rights states that we have lived on our home land according to our laws and systems of governance since time immemorial;
>
> AND WHEREAS our laws from the Creator do not allow us to cede, release, surrender or extinguish our inherent rights;
>
> AND WHEREAS the working document Gathering Strength, Canada's Aboriginal Action Plan, and the federal government's priority recognizes the unique dialogue between aboriginal and non-aboriginal people to define a new constitution for the western Northwest Territories;
>
> AND WHEREAS the land claims and self-government negotiations allow for a process to respect all human rights;
>
> AND WHEREAS the insertion of a human rights section in the NWT Act would allow First Nations the opportunity to address al aspects of human rights that will also recognize individual rights;
>
> AND WHEREAS the Deh Cho Framework Agreement under section 4(1), subject matters for negotiating include a constitution of the Deh Cho government and a model of governance;
>
> AND WHEREAS the human rights legislation will undermine the collective rights as First Nations that have been practiced since time immemorial;
>
> NOW THEREFORE be it resolved that the Deh Cho First Nations cannot support the implementation of this Human Rights Act 2002.

This was moved by Chief Stanley Sangris, seconded by Leon Thomas. Again this was passed with two abstentions, one from Randy Sibbeston and Roy Fabian, who just got in as Chief -- and it wasn't against the Act itself but that he didn't understand what the Act was all about. So he abstained from voting on it. This is the second Motion.

We as First Nations have our own culture. I have already noted that it says that in the document itself. Human rights -- what does it mean? It could mean different things to different people. For aboriginal people we call it aboriginal rights. For non-aboriginal maybe human rights is more appropriate.

You have to also look at the circumstances as to why human rights were created after 1948. The circumstances that would allow for something like this to be created would be if there were atrocities, oppression or genocide. There is a whole array of reasons why human rights have been created, and those who violated them get punished in some capacity or other.

The other thing is with regard to the circumstances of government that also defines human rights, and depending on which side of the fence you are from it might mean a lot to some people but it will mean nothing to other people. The human rights in China might be -- it is not required maybe. Although it is a communist country, most of the people their human rights are not being violated, Maybe their democratic rights, but not their human rights.

For example, India just gained its independence recently and they can decide now when human rights are appropriate for their people. In the Americas we are under totally different circumstances. We have colonizers that are drafting human rights for us. I say that the circumstances differ and I think the North differs too -- uniquely different.

The North is maybe the only area in Canada that doesn't have human rights legislation. For that reason I think we can make it as unique as possible if we were to support something like this. We can make it so that it is a human right, not a government legislated document.

The other issue I would like to raise is that you have invited a lot of people here. I have seen the list. A lot of interest groups are being represented here, but I don't see any grass roots people doing presentations on this. You did explain to us at the beginning of the meeting that you have done everything you could putting it in the papers, on the radio and in the media and everything else, but we didn't get the kind of response that we anticipated. Have you ever thought whether or not the people out there are really interested in such an Act at this point in time? Maybe the interest is not there because it is not necessary that we have human rights legislation. This is the reason why we ourselves as the Deh Cho government don't feel that this legislation is needed, and we cannot support it.

I do not know whether or not you have even explored the possibility of putting it in the NWT Act. This would then allow First Nations at least, through their process, to define what human rights should be, rather than this government doing it.

If we chose to support something like this, does it also mean that we legitimize this government on our rights as humans? I don't have the answers.

I can tell you that the timing is all wrong. In 1986 the aboriginal people really didn't need it at that time. I don't know what we should need it at this point in time either. I don't see any oppression or ethnic cleansing or anything like that that justifies the requirement for human rights legislation.

There is also the whole issue of whether or not this also neutralizes other legislation, or affects other legislation, or impacts on other legislation. Does this legislation supersede all other legislation, or does other legislation supersede this Act? Don't forget this is a Human Rights Act. This is not a government made document which becomes law. We have laws now that govern aboriginal people in the way they hunt, in the way they are educated, in the way they are served under their health care system, but this is a whole new ball game. You are putting us in the same category as everyone else. We are First Nations. We are different form you. This is our home land. The only reason why you are here is because of your birth right as a citizen to be here. It is different.

That is all I have to say. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Chief Gargan, and we are certainly doing our best to photocopy the information that you have given us and we will get it before you go.

MR. GARGAN: Those are extra copies. We do have enough copies ourselves.

CHAIRMAN (Mr. Bell): Thank you. I would like to make a couple of comments and then I am going to go to the committee for some questions, if that is alright with you. The one thing I first wanted to address and certainly this is a concern, when we go out to communities, as Ms. Norwegian has said, people may not understand and likely don't understand the nature of the legislation, and that in itself makes the consultation a problem. I think one of the things that we are stuck with and that has occurred to us and many of the presenters that have come before us is that one of the biggest failings of our current Fair Practices Act is that it doesn't allow for a public education role.

This new human rights legislation contemplates that the Commission's main role will be to educate all residents in the Northwest Territories about human rights. Unfortunately, until we set up the Commission and until we enact this legislation there is no Commission and there is no public education role. It is almost a chicken and egg question. People obviously need this education and they need to know about human rights, and in order for us to get that across we have looked at creating this body, this Commission in order to do that.

I can tell that this is some source of frustration not only to you, but to many people across the North. We are hoping that in future, with the passing of this legislation, that would be addressed.

MR. GARGAN: Assuming...

CHAIRMAN (Mr. Bell): Assuming, Chief Gargan, yes. You have raised several concerns about collective rights being diminished by individual rights. I think was cognizant of not wanting to do that in the drafting of this bill. As you say, it is unique to the Northwest Territories. They have put in section 2 that speaks to nothing in the Act being allowed to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982. I think this was a critical piece of this legislation that the government felt was necessary so as not to diminish the collective rights of First Nations people, and to make sure that in no way does this supersede the Constitution of Canada and the Indian Act.

I know this will not alleviate all of your concerns, and you spoke to these earlier, Mr. Antoine, but I think the government has attempted to some degree to try to relieve First Nations peoples of those concerns that somehow this would impact their collective rights. We have heard from other presenters -- Mr. Nerysoo comes to mind -- in speaking about collective rights stemming or flowing from the individual rights of the people who make up that collective. I think that was a message that hit home with the committee and certainly something that we need to discuss. You talked a little bit about this.

You have given us a lot to discuss, talk and think about. It is impossible for us to digest it all here at once right now, but we certainly assure you that we will sit down and go through all the documents you have given us, study all the information you have provided us with and certainly we look forward to making recommendations to the government about what should happen from here on. Then it is up to the government to determine whether or not they will take the recommendations of this committee or not.

I will go now to see if there are any questions from committee members on any of the presentations. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I was interested in Chief Gargan's suggestion that we should have sought an NWT Act amendment to allow First Nations to determine what human rights are, rather than imposing them. I guess I would want to be very careful. I believe that the position of the Deh Cho First Nations is that this government cannot pass legislation which takes away your rights. The government has tried to make it perfectly clear in here by inserting section 2, the non-derogation clause.

What would stop any First Nation from negotiating on what sort of human rights regime your government would have at the tables? If you have constitutional rights, or if you have rights from time immemorial, they aren't going to be damaged by an act of the Assembly. I think that is the position that the First Nation has taken all along -- this Assembly cannot do anything. The government has made it clear in this Act that they are not trying to by putting in section 2 which says that nothing in this Act should be construed as to try and impose on those rights.

The committee was of the opinion that the government had gone some way to try and deal with the concern that might come from First Nations, but there could be some sense that this Act was supposed to impact on First Nation governments> This is one of the first acts that this government has ever passed that has that non-derogation clause in it. This is one of the first instances where this government has say, let's try and be perfectly clear with First Nations governments that this bill that we are passing has no impact on their collective or treaty rights. That has actually been taken into account in this Act.

I would just like to ask Mr. Gargan if he has given some thought to that. I know from his days in the Assembly we never saw that sort of clause in our bills, and now we are starting to see them. There is a real recognition there of the need to have some clarity that we are not trying, as a government, to impact on First Nations collective and treaty rights.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Gargan.

MR. GARGAN: Mr. Chairman, the rights of our people are based on the document that we provided to you. In there we have the values and principles, and these are what we live by. The individual's right is a collective right because of their relationship with the land and all living things. Who are we to put ourselves above that? That is our question. It is against our culture to try to individualize certain aspects of the universe and then think that there is harmony or balance. We say that we are one with the land and all living things. The Creator put us there in that capacity. I do not know why we should try and change that. That is my point.

The only way you can do that is if you separate the humans from everything else, the land and the animals. That is the only way you can create something. In our culture it is not. We are all one with it. That is why we find it very difficult to accept legislation that actually says that a man made law recognizes those rights. We find that very difficult.

CHAIRMAN (Mr. Bell): Thank you, Mr. Gargan.

MR. GARGAN: And, with regard to the history, the Northwest Territories had - you can easily fit the Human Rights Act into the Northwest Territories Act. There is where the law -- because this is federal legislation. It at least allows the aboriginal people to define what human rights are in their negotiation process, whereas when the Gwich'in are implementing formal self-government it is there.

CHAIRMAN (Mr. Bell): Thank you, Chief Gargan. Mr. Dent.

MR. DENT: Mr. Chairman, I guess I would argue that there is nothing we could do that could take that right away from aboriginal people right now. Aboriginal people have that right to negotiate at the table what sort of regime they have that is their government.

CHAIRMAN (Mr. Bell): Mr. Gargan.

MR. GARGAN: Mr. Chairman, I agree with Mr. Dent. So why is there such a (inaudible).

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: There is no urgency among the members of the Deh Cho First Nation for this kind of bill. Where the urgency comes from is a number of us have constituents though who see this as a modernizing of the Fair Practices Act. It is nothing more than that. It is a change, Mr. Antoine spoke of this, the Fair Practices Act. That is in effect all we are doing, changing the Fair Practices Act to having a commission that runs it instead of a fair practices officer. The commission is charged with an education function, and we have a director then that actually runs the operation and it includes sexual orientation as a prohibited ground. Those are the three key changes between a Fair Practices Act and what we are calling the Human Rights Act.

It is nothing more other than having a different name. If that is the problem maybe we should just change the name to Fair Practices Act because we would not change the bill. It does not purport to do anymore than update the Fair Practices Act. It is just that in every other jurisdiction they call their Fair Practices Act the Human Rights Act. It cannot impact on federal legislation.

For instance, at a radio station, this bill will not impact a radio station because everyone who works for a radio station is still going to be under federal legislation. Someone who works at a bank, they are still under the federal legislation. What this does is it will help protect individuals better. So someone who right now goes to find a house in Yellowknife, if they are aboriginal they are discriminated against and they cannot get the house, they can go to the fair practices officer. With the new system they go to the human rights commission. The thing is now that someone who is discriminated against because they are gay or lesbian, they have no recourse.

That definition is added in this bill. There is no intent here to try and say this is something that is going to overtake the aboriginal First Nations and that is why we are trying to make that perfectly clear. There are a number of our citizens who feel that the current system does not adequately protect them. This was an attempt to modernize the legislation and bring in things like sexual orientation as a prohibited ground and change from having one person, a fair practices officer -- right now the fair practices officer receives the complaint, investigates the complaint and then judges the complaint. Well that is really not considered fair in our legal system that the person who investigates and receives the complaint also makes the decision on it. That is why you have prosecutors and judges. This system basically brings in the equivalent sort of situation where you have a different prosecutor and a different judge. Then you have a tribunal that is separate that makes the decision.

The intention here is certainly not to make this a grand human rights legislation. This Legislature has not got the authority to do that. We cannot supersede the laws of Canada or the Constitution of Canada. All we are trying to do is update the Fair Practices Act.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. That is more of a comment than a question. Mr. Antoine.

MR. ANTOINE: That was my opening comment, the Fair Practices Act and then the Human Rights Act. It is a great leap if you take a look at its actual context. That is what we, as indigenous people are trying to resolve. We are trying to get the world to resolve this. That is what our people are saying when they start talking about treaties. We have a relationship, we need to recognize it and implement it. In terms of human rights, we are not really considered human beings and that is why I first started say, look, a Fair Practices Act and then you look at the other spectrum, human rights if you want to take that on it is a big task.

I agree with Mr. Dent that maybe just state that. That is what you are trying to do, just upgrade some things. Maybe that is what should be done. Not to have another word because there are implications. The human rights -- that is pretty big. It will still be debated, that particular word. So that is my advice. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Antoine. Go ahead, Chief Gargan.

MR. GARGAN: Just to expand on that they are also, by this legislation, creating classes of people even though it says irregardless. This Human Rights Act allows people to act because of who they are. In other words, they can now use the argument that "I only got high because I am an Indian." You seem to think that because I am an aboriginal that is a target group that is going to be affected by it, but you have Inuit, white people, blacks. There are all kind of races. We create legislation to create classes of people that can challenge the decision of (inaudible). I do not think we have any problems like that before, but it is going to create a bureaucracy that is going to address those complaints.

I have had one experience with regard to filing complaints. A number of our people in the community, they were denied their human rights under section 35. I tried (inaudible) I tried New York, I have been shucked all over the place. No one really (inaudible). Of course, if we decide to have this legislation to create this new body, a champion of human rights, are you just going to be creating more confusion?

CHAIRMAN (Mr. Bell): I will see if there are any more questions. I think Ms. Peterson had a question.

MS. PETERSON: Thank you, Mr. Chairman. I understand the points that have been made about not avoiding the concept of collective rights and recognizing we are really talking about entirely different world views here and that you cannot necessarily impose one world view on another.

Should the legislation not apply, should it specifically say it does not apply to aboriginal people? I recognize that distinction.

CHAIRMAN (Mr. Bell): Chief Gargan.

MR. GARGAN: Up to this point in time, all human rights legislation seems to be on Western people. My suggestion is that we are still unique in the North, very unique. Can we put it all together, mesh it all up and come up with something that is unique?

I also recognize that you are saying that we cannot do more than what is out there, but by doing it the way you are doing it, is it any more or any less? Where is it better?

I think someone said that we are trying to do something great here. Well, I think we have to go beyond that and say that we have to do it for the right reasons.

CHAIRMAN (Mr. Bell): Thank you, Chief Gargan. Ms. Norwegian.

MS. NORWEGIAN: Well that is a very good question. I do not have the answer to that and I don't think our leadership does either, that is why I am suggesting that we don't go ahead with this legislation until we can actually get together and decide what we want. I do not know. I cannot answer that.

CHAIRMAN (Mr. Bell): Thank you. Ms. Peterson.

MS. PETERSON: That is fine, thank you.

CHAIRMAN (Mr. Bell): Mr. Braden.

MR. BRADEN: An impression that I have picked up more and more through the discussions in the last couple of days and in my reviews of lots and lots of paper is that the modernizing of the Fair Practices Act, renaming it, or rebuilding it is not going to solve all the problems of discrimination simply by passing it on the floor of the Legislative Assembly.

I think we expect too much of this if we say that is going to happen. The impression or sense that I have of this bill is that it is going to give us a better tool box, if you will, a better ability to solve problems when they happen. For instance, it creates a Human Rights Commission which we hope will be a good mechanism that people can go to when they believe they have a problem and hopefully get it solved without having to go through a bunch of adjudication or go to the courts. There will be people there, skills and expertise to sit down with parties and I hope work things out before it gets too serious.

That is where we are doing a good job here in this bill. We are enabling people to solve the problems in a better and more efficient way. That is the benefit of this. If we try and second guess or interpret what is going to happen because of this, before we pass this bill, we are going to be here for a long long time and I think we are going to deny people the ability to fix problems. They have to have some trust I guess, some faith in the foundation, the ideas we have here and in the people we are going to appoint to make it happen.

Through time and case law and adjudication we will come up with the ideas and the decisions and the guidelines that will help us work and live together in a better way. I think the bill recognizes that people are going to make mistakes, intentionally or otherwise, and that is fine. We know that things are going to go wrong. It is how we manage them. I think that is the real test of how we operate as a society and this is a good way of managing a really difficult problem. At least I think it is the best way we have now.

Mr. Chairman, I have one other thought that helps me understand this or communicate what it is. It is a bit like an insurance policy. There is perhaps nothing right now that I need this bill or that my constituents need this bill for, but at some time or some future situation someone may feel someone has done something wrong and it has affected the way they live. Discrimination has occurred and they need a way to solve it. In that sense, I look at it like an insurance policy. It is there for me to use when and if something goes wrong. That is why we need this bill now.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. I will ask Chief Gargan and Mr. Antoine if they have any closing comments, because we do have to wrap up. Please go ahead, Chief Gargan.

MR. GARGAN: In regard to the response to what he just said is that up to this point in time in the Northwest Territories I think the term Northerner has been used in a very good way. You have legislation, the sunset clause, for example, that allows for individual people to back off anything, not to challenge the election act based on population. You create something like this, you also create individuality. People that will challenge every legislation that is not equal in scope.

At one time, maybe it grew like this, someone said, okay, we will just keep the sunset clause. Maybe this thing will come and anybody from the street can sit here and say your legislation act is not proportionate to the population. You have a court challenge. You stop an election from happening. That could very well happen. I have problems with that.

The other thing that I see happening here is that we did not have a proper forum. We did not have legal experts, constitutional experts, people who are knowledgeable in the aboriginal laws to come together to actually come up with something that may be similar to that or could be better than that but also something that could be unique. We have not had that opportunity. It would be nice to have the opportunity to get the feeling that this came from all of us rather than feeling alienated because we do have different value systems that are not addressed.

CHAIRMAN (Mr. Bell): Thank you, Chief Gargan. Mr. Antoine.

MR. ANTOINE: Mahsi. There was a question that Ms. Peterson had talked about, the indigenous clause. I have been involved with discussions when some of them were in regard to constitutional debate, also the more regional level, the Northwest Territories constantly talk. This is one of the things that they also suggested was a non-indigenous clause in there. I guess I had some experience with that. I thought about it when you mentioned that. I do not know to this point if it ever did any justice to the indigenous clause. It is just like saying we are doing this but we will put you aside. We will put your concern aside. It would not interfere with that.

So in that context I do not think it does any justice. We are trying to resolve things. So we are just saying hold off. To me, from my experience, I see it that way.

One of the things, I like the chairman's opening comments when he is talking about a framework through which the goals of equality can be guided and enhanced. I think that is basically the indigenous people's goal, to do that. That is what they have been wanting. That is what our people are trying to say when they raise concerns with treaties. That is what indigenous people are also trying to do. They are saying we need to be included. These are our minimal standards.

I think we have to start implementing them at this level, not to put us aside. We have been putting aside a lot and every time we bring this up we do not see things eye to eye. People feel that offence. It should not be. We should be in partnership. That is what I wish for to resolve it. To resolve it that way.

There has been a prophecy. During my training as an indigenous person, a prophecy is that there are four bases of man, or humankind. There is the red, yellow, black and the red. The prophecy sees that all four will be meeting in the territory of the red person and I see that the prophecy has come true that all four races of humankind are here in our territory. We need to learn something from it, we need to do something to fulfill that prophecy. That is my concluding statement. Mahsi.

CHAIRMAN (Mr. Bell): Thank you, Mr. Antoine. I think you have made an excellent observation or point whether or not it is possible that this section means there will not be an erosion of aboriginal rights, but does it just sort of set them aside and do nothing to further the cause. I think that is something that we had some discussion about with Mr. Erasmus about earlier and he opened our eyes, at least mine, to a section of our non-derogation clause which states that "existing aboriginal or treaty rights of the aboriginal peoples of Canada, by the recognition and affirmation of those rights in section 35" and he was asking, does this now open an avenue for aboriginal people who feel that their treaties are not being implemented to have a cause or an avenue to lay a complaint now in order to force the federal government to recognize those things which they have agreed to. It was something that we certainly expect a lot of discussion and something we need to get our heads around. It was an interesting perspective.

I would agree there are oftentimes clauses which may do nothing to further an interest and although not eroding from it, may just be setting those aside or saying we are not going to be diminishing those rights. I thought it was an interesting perspective and you have raised the same issue again. Thank you. Mr. Antoine.

MR. ANTOINE: Just that last part, I guess I have heard from Mr. Dent that the intent of this document is to upgrade the Fair Practices Act. If that is the objective, I do not see any problem. However, if it gets into the human rights then, there is a great deal of concern. I think that the committee should look at that that way and there is room for improvement. I think that is what the intent of that document is.

Sometime I know from experience that we may jump the gun into a larger concept. I think just by changing the word gave an indication to the people who overheard it to say, holy moly. I think the committee needs to really look at what the intent of the amendment was. I think that we need to take it a step at a time. I think maybe we went further up the ladder rather than take that step. I think maybe that is something that the committee could take into consideration. That is just my observation. Mahsi.

CHAIRMAN (Mr. Bell): Thank you, Mr. Antoine and we will certainly discuss that. Ms. Norwegian.

MS. NORWEGIAN: I just want to say that I heard exactly what Bill Braden was asking. Reviewing the better one, yes I agree, but we have waited 16 years since the implementation of the Fair Practices Act. What is another year? All I am asking for is just a little bit more time for my elected leaders to decide what should be decided. What should happen.

You say it is not perfect and I agree. Lots of people agree. Why not just start off on the right foot? thank you.

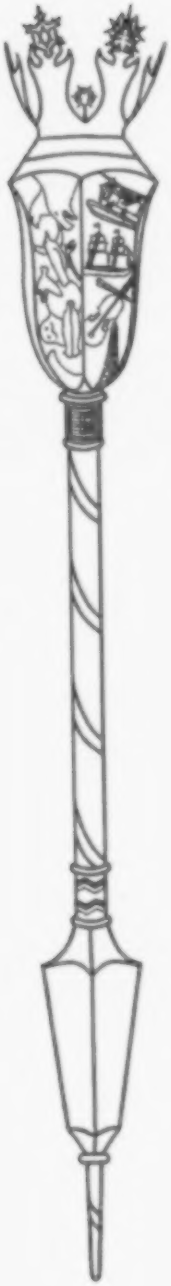
CHAIRMAN (Mr. Bell): Thank you, Ms. Norwegian. Chief Gargan.

MR. GARGAN: I know that you guys met in Fort Providence when you first got elected and you came out with this very nice statement on your vision for a prosperous future. A lot of it has to do with partnerships. We do not see it. We do not see any of it. This is a really good priority and goal you set for yourselves, but you are not acting on it. (Inaudible) that you look at this document. I think the spirit and intent is to create unity. If you can put that into practice maybe -- this legislation is important to everybody. This legislation affects everybody. This legislation also needs everybody's participation. If it is done, then it is something unique because you have everybody. The only opportunity that is here in the North. All others, those governments just created that legislation without anybody, grassroots participation. They have done it with the assumption that what they are doing is for their best interests rather than seeking input. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Chief Gargan. You would not be the first to make that recommendation about that document. Thank you. Thank you all for taking the time to come and make the presentations here today. I think it was very good for us to be able to hear from you. We really appreciate the effort that you have taken in composing the presentations and compiling all of the documents that you have brought before us. Our photocopier has been working overtime but I think we have got them all and I assure you that we will go through them in great detail. Thank you again.

MR. GARGAN: Thank you very much.

-- ADJOURNMENT



Northwest Territories Legislative Assembly

Standing Committee on Social Programs

Public Hearing on Bill 1, *Human Rights Act*
Clause-by-Clause Review

October 9, 2002

Public Hearing

Standing Committee on Social Programs

Chairman:

Mr. Brendan Bell, MLA for Yellowknife South

Deputy Chair:

Mr. Leon Lafferty, MLA for North Slave

Members:

Mr. Bill Braden, MLA for Great Slave

Mr. Charles Dent, MLA for Frame Lake

Mrs. Jane Groenewegen, MLA for Hay River South

Department of Justice Officials:

The Honourable Roger Allen, Minister

Ms. Janice Cooper, Legislative Counsel

Ms. Diane Buckland, Legislative Counsel

Legislative Assembly Staff

Mr. Dave Inch, Committee Clerk

Ms. Katherine Peterson, Q.C., Law Clerk

Ms. Kelly-Ann Fenney, Committee Researcher/Writer

STANDING COMMITTEE ON SOCIAL PROGRAMS

Clause-by-Clause Review of Bill 1: Human Rights Act

October 9, 2002

Yellowknife, Northwest Territories

CHAIRMAN (Mr. Bell): Welcome Mr. Minister, staff, media and members of the public to the Standing Committee on Social Programs, public review, clause by clause of Bill 1 with the Minister, the Honourable Roger Allen, Minister of Justice. Mr. Braden, can I call on you to open with a prayer.

MR. BRADEN: Creator, thank you for bringing us together on another day to work on behalf of the people of the Northwest Territories. Help us listen and learn as we go about our business and Creator, I would like to thank you especially for a young lady who 25 years ago today said "I do" to me. I am very grateful for that. That's it. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden and congratulations. Item No. 2, review and adoption of the agenda. Are we agreed with the agenda? Okay. Item No. 3 is the clause by clause review, Mr. Minister. I don't know if you have any opening comments but, if you do you can begin and if not, could you just please introduce yourself for the record.

HON. ROGER ALLEN: No, I do not have any opening remarks. I believe we have done that previously. To my right is Janice Cooper and to my left is Diane Buckland both with the Department of Justice. Thank you.

CHAIRMAN (Mr. Bell): Welcome to both of you. We will just get under way then. We will stand on the preamble and come back to it when we have completed the clause by clause. We are on page 8 of 1. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman, perhaps a procedural question. I am just wondering copies of the motions or amendments before us can be made available to the public and the media.

CHAIRMAN (Mr. Bell): I understand as each motion is made, it's made available to the public at that point and the Clerk will make it available and distribute it.

MR. BRADEN: Thank you.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: Mr. Chairman, the Committee, has a motion that we would like make, so I propose to make that now, if we are ready. I move that clause 1 of Bill

1 be amended by deleting the definitions – "disability" and "person" in subclause (1) and by substituting the following definitions in alphabetical order:

"Disability" means any of the following conditions:

a) any degree of physical disability, infirmity, malformation or disfigurement that is cause by bodily injury, birth defect or illness;

b) a condition of mental impairment or developmental disability;

c) a learning disability or dysfunction in one or more of the processes involved in understanding or using symbols or language;

d) a mental disorder; (incapacité)

"Person" includes an employment agency, employees' organization, employers' organization and occupational association; (personne)

b) striking out the period at the end of the definition "social condition" in subclause (1) of the English version, by substituting a semi-colon;

c) striking out the semi-colon at the end of the English version of the definition "Speaker" in sub-clause (1) and by substituting a period; and

d) adding following after subclause (1):

(1.1) Examples of diseases or conditions that fall within paragraph (a) of the definition "disability" include, but are not limited to, diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheel chair or other remedial appliance or device.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called, all those in favor? Any opposed? The motion is carried. Mr. Minister do you concur with the motion?

HON. ROGER ALLEN: Yes, I concur.

CHAIRMAN (Mr. Bell): Thank you. Clause 1 as amended, agreed?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Mr. Braden, can you help me out with the next motion? Clause 2, Mr. Braden.

MR. BRADEN: Right. Thank you, Mr. Chairman. I make the following motion that the definition, "social condition' in sub-clause 1 (1)....

CHAIRMAN (Mr. Bell): We're going to return to clause 1, and that's the motion you're dealing with now Mr. Braden, so if you could just begin again, my fault, it's Clause 1.

MR. BRADEN: Thank you, Mr. Chairman. I move that the definition of "social condition" in sub-clause 1(1) of Bill 1 be amended by striking out

> "illiteracy "and substituting "level of literacy".

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Opposed? The motion is carried. Mr. Minister, do you concur with this motion.

HON. ROGER ALLEN: Mr. Chairman, no, we do not concur with this motion.

CHAIRMAN (Mr. Bell): OK, the clause 1(1) is not amended. Members, are there any questions, Mr. Dent.

MR. DENT: Mr. Chairman, I understand that from a letter that we received from the Minister that the government had wanted us to consider a significant change to the definition of 'social condition' that would have reduced it to just a consideration of source of income. I think the committee had consented an indication to the Minister that we were prepared to consider a typing of the definition but not one that went as far as the government is proposing. I think that's only fair that the Minister know that when this comes to the floor of the house, we will be proposing this motion again, even though that you may have a motion to substantially change the definition of 'social conditions'. So unless you can come up with something that is more acceptable to the committee, we will be pushing to try to get a majority to pass this amendment rather than the one the government has proposed.

CHAIRMAN (Mr. Bell): Mr. Minister

HON. ROGER ALLEN: Perhaps, if I may ask my officials to respond to that specific question.

CHAIRMAN (Mr. Bell): Thank you, Ms. Cooper.

MS. COOPER: I'm not sure whether that was a question or a statement. We appreciate the information and we will look at it further.

CHAIRMAN (Mr. Bell): Thank you. Clause 2, clause 3, fine? Clause 2?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 3?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 4?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 5? Mr. Dent?

MR. DENT: I move that sub-clause 5(1) of Bill 1 be amended by

a) adding "gender identity," after "sexual orientation,"; and

b) adding "family affiliation, political belief, political association," after "family status,".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Motion on the floor to the motion. A question has been called. All those in favor? None opposed? The Motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: No, I do not concur with this motion.

CHAIRMAN (Mr. Bell): Clause 5 is not amended. Questions from committee members? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. In public hearings, the aspect or the issue of whether gender identity should be specifically stated as a prohibited ground was raised by a couple of presenters. While it seems or have had advise from our counsel that the courts generally are interpreting in favor or do consider gender identity as an aspect that should be considered as a prohibited ground, it's not stated in our legislation. The committee is of the opinion that if this is what we mean and this is what we want to be understood as our meaning, then why don't we state it. We would like to be fairly forward and clear on this, perhaps rather than leave it to an interpretation. Although it may, generally go in favor of this interpretation, let's be out front and actually put those words in the bill. That is the committee's position on this. Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. How about Mr. Dent, I didn't hear a question on this, I missed it? Mr. Dent.

MR. DENT: I'd like to just agree with Mr. Braden. I think that it is unfortunate the government has chosen not to agree to adding gender identity at this point in the bill. We had no presenters who had any problems with this so it's clearly something that there was no sense from any body who made a presentation on this bill, that it shouldn't be in there. So I don't know where the government when they chose not to proceed at this point and time. Obviously it's going to come forward in the House from the committee when it's on the floor. I'm also concerned about the government not being prepared to add family affiliation or political belief or political association.

Clearly the committee is concerned about, for instance, a housing association. Somebody going to a housing association and being refused accommodation because they are a member of the family and people don't like that family in that community. We need to make sure that sort of situation can't happen. We thought it was important that if this was covered, it would make it very clear, so that people would understand that they couldn't discriminate for that reason and refuse to provide accommodations. That's one of the reasons why we were so intent on putting the family affiliation or political affiliation in here. We want to make sure that kind of discrimination is seen very clearly to be prohibitive. I am somewhat saddened that we can't move forward with these two changes now. I assure the Minister that we will be bringing them forward when it gets to the floor in the House.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Minister, maybe I will ask you, if you can explain why you chose not to extend family affiliation to provision of service and things outside of employment. Mr. Minister.

HON. ROGER ALLEN: If I may Mr. Chairman, just prior to that, I'd just like to make a quick comment on the gender identity. It's the government opinion, that we would like to have that debate in the Committee of the Whole. It will allow the members to express their views on that specific issue. If I may, with your permission, Mr. Chairman, I'll have Ms. Cooper respond to that the second part of the question of the family affiliation and political belief.

CHAIRMAN (Mr. Bell): OK, Mr. Minister, Ms. Cooper.

MS. COOPER: The department was under time constraints to get all the recommendations of the committee before Cabinet. There wasn't sufficient time to analyze the implications of extending those grounds of family affiliation, political belief and political association across the board, to one, two, three, four, five, six other protections. We'd like to do a thorough analysis to see if there are implications that would give rise to other considerations as well. Unfortunately there wasn't sufficient time to do that. Cabinet has not provided the Minister with authority to concur at this time but the department and the government will continue to give this a close look.

One of the issues that had come up that there was some concern with was whether or not an owner of the business, we're not talking about a manager, we're talking about someone who owns the business (say a trucking business) can give preference to his or her family members. Perhaps they are going into business to improve the conditions of there family and they want to hire their family. This is a concern that applies even now with the way family affiliation is included but if they want to give a preference to family member, would this come under scrutiny? So the government is looking at extending it across the board but also looking at some proposed motions to allow preferences to family members (for example with housing units, if you own an apartment building or if you provide services), it's an issue that requires more consideration.

There's also the issue, when one extends political belief to cover all the grounds of discrimination, one would also it to cover publication. Freedom of speech and freedom of political belief is pretty fundamental to democracy. We have some concerns with seeing whether political belief might impact on that clause (it's clause 13 on publication), whether you're going to get in trouble for saying this is the wrong way to view the world. We want a little more time to consider that as well.

CHAIRMAN (Mr. Bell): Thank you, Ms. Cooper. I guess the best that we can hope for is that we can have this debate on the floor of the House and deal with it at that time. Clause 5. Mr. Dent.

MR. DENT: Mr. Chairman, I'd like to move a motion to clause 5. I move that Bill 1 be amended by adding the following after sub-clause 5(2.):

> 2.1 Whenever this Act protects an individual from discrimination on the basis of disability, the protection includes the protection of an individual from discrimination on the basis that he or she
>
> a) has or has had a disability;
>
> b) is believed to have or have had a disability; or
>
> c) has or is believed to have a pre-disposition to developing a disability.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All of those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you. Clause 5, as amended.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Clause 6? Clause 7? Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I have an amendment to move, as follows, that clause 7 of Bill 1 be amended by

> a) striking out "age and marital status" in sub-clause (3) and by substituting "age, marital status and family status"; and
>
> b) striking out, "Regardless of whether a practice described in sub-section (1) or (2) results in direct discrimination or adverse effect discrimination, in order for it to be considered to be based on a *bona fide* occupational requirement" in sub-clause (5) and substituting "In order for a practice

> described in sub-section (1) or (2) to be considered to be based on a *bona fide* occupational requirement,".

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes, I concur.

CHAIRMAN (Mr. Bell): Clause 7 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Clause 8, Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I move that sub-clause 8(3) of Bill 1 be amended by striking out

> "Regardless of whether a practice in subsection (1) results in direct discrimination or adverse effect discrimination, in order for it to be considered to be based on a *bona fide* occupational requirement," and by substituting " In order for a practice described in subsection (1) to be considered to be based on a *bona fide* occupational requirement,".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Opposed? Motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I do.

CHAIRMAN (Mr. Bell): Clause 8 as amended? Thank you, clause 9? Mr. Dent.

MR. DENT: Mr. Chairman, I move

> that subclause 9(4) of Bill 1 be amended by striking out "employees of an establishment" and by substituting "employees employed in the same establishment".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes, I do.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 9 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Great! Clause 10, Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I'd like to move the following amendment that subclause 10(2) of Bill 1 be amended by striking out

> "Regardless of whether a practice described in subsection (1) results in direct discrimination or adverse effect discrimination, in order for the justification to be considered to be *bona fide* and reasonable, and by substituting "In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable,".

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes, I concur.

CHAIRMAN (Mr. Bell): Clause 10 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 11, Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I move that subclause 11(2) of Bill 1 be amended by striking out

> "Regardless of whether a practice described in subsection (1) results in direct discrimination or adverse effect discrimination, in order for the justification to be considered to be *bona fide* and reasonable," and by substituting "In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable,".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 11 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 12. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I would like to move the following amendment that subclause 12(2) of Bill 1 be amended by striking out

> "Regardless of whether a practice described in subsection (1) results in direct discrimination or adverse effect discrimination, in order for the justification to be considered to be *bona fide* and reasonable," and by substituting "In order for the justification referred to in subsection (1) to be considered *bona fide* and reasonable,".

Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 12 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you, committee. Clause 13. Mr. Dent.

MR. DENT: I move that clause 13 of Bill 1 be deleted and the following substituted:

> 13. No person shall, on the basis of a prohibited ground of discrimination, publish or display or cause or permit to be published or displayed any statement, notice, sign, symbol, emblem or other representation that
>
> (a) expresses or implies discrimination or any intention to discriminate against any individual or class of individuals;
>
> (b) incites or is calculated to incite others to discriminate against any individual or class of individuals; or
>
> (c) is likely to expose any individual or class of individuals to hatred or contempt.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Clause 13 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 14. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I'd like to move the following motion that Bill 1 be amended by

> (a) renumbering clause 14 as subclause 14(1): and
>
> (b) adding the following after subclause 14(1):
>
>> (2) In subsection (1), "harass", in respect of an individual or class of individuals, means engage in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome by the individual or class.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 14 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you, committee.

CHAIRMAN (Mr. Bell): Clause 15. Clause 16. Mr. Dent.

MR. DENT: Mr. Chairman. I move that subclause 16(3) of Bill 1 be amended by adding "experience and" before "an interest in".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 16 as amended committee?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Clause 17. Mr. Braden,

MR. BRADEN: Thank you, Mr. Chairman. I'd like to move the following motion that clause 17 of Bill 1 be amended by

(a) deleting subclause (1);

(b) renumbering subclauses (2), (3), (4), (5), (6), (7), (8) and (9) as subclauses (1), (2), (3), (4), (5), (6), (7) and (8), respectively;

(c) striking out "term of three years" in renumbered subclause (1) and by substituting "term of four years"; and

(d) Striking out "term of one to three years" in renumbered subclause (1) and by substituting "term of one to four years".

Thank you.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Clause 17 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. During our review of the bill, we noticed that the terms and conditions for the remuneration for the Director was set out in the bill and that the Legislative Assembly could set such terms and conditions for paying the Director were felt to be reasonable. We didn't see the same kind of information set out in the bill for the members of the Commission. Clearly I would think that the Legislative Assembly would want to be able to have the flexibility to appoint either part-time, full-time or even just advisory or honoraria members to the commission, if we felt that was required. We thought that it would be important to set out in the bill, that the Legislative Assembly had the right to provide honoraria expenses as necessary to people who are filling that position. I would like to propose another motion to amend the bill and I move that clause 17 of Bill 1 be amended by

(a) renumbering subclauses (6), (7) and (8) as subclauses (7), (8) and (9), respectively; and

(b) adding the following after subclause (5):

(6) A Commission member shall be

(a) appointed on such terms and condition as may be prescribed;

(b) paid such honoraria or remuneration as may be prescribed; and

(c) reimbursed for reasonable travelling and other expenses necessarily incurred by the Commission member under this Act, subject to any restrictions in respect of the amount or type of expense that may be provided or adopted by the regulations.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. q question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Mr. Chairman, no I do not concur with this motion.

CHAIRMAN (Mr. Bell): Any questions from committee? Mr. Dent.

MR. DENT: I think it's worth it, I expect that the committee will bring this forward on the floor of the House, just give the Minister full warning. We will continue to push this issue. Thank you, Mr. Dent.

CHAIRMAN (Mr. Bell): Clause 17 as previously amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 18. Mr. Braden.

MR. BRADEN: I'd like to move the following motion that clause 18 of Bill 1 be deleted and the following substituting:

18. (1) The Commission members

- (a) shall designate one of the Commission members as chairperson of the Commission;
- (b) may designate one of the Commission members as deputy chairperson of the Commission; and
- (c) may designate one of the Commission members to be an acting chairperson, if
  - (i) the chairperson is absent or unable to act, and
  - (ii) the deputy chairperson is absent or unable to act or the office of deputy chairperson is vacant.

(2) An acting chairperson designated under subsection (1), for the period of his or her designation, has all the powers and shall perform all the duties of the chairperson.

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. There is a motion on the floor. Mr. Dent.

MR. DENT: Mr. Chairman, I am in favor of this motion, but for the record I just wanted to note that the Commission themselves, when they are setting up their procedures for appointing the chairperson will also set a term that the chairperson sits in office. So that this isn't something that once a person is selected as chair, if they are re-appointed to the position then they could carry on automatically for 12 years and be the chair. We've left it open so that that could happen. So I just want to be on record as saying that I hope that they will set their own procedures to make sure there is a periodic review of the position and the appointment of the chair.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Thank you, Mr. Chairman. Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 18 as amended, committee?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 19.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 20. Mr. Dent.

MR. DENT: During the public hearings, we had a number of groups that came forward and recommended that the Commission be able to undertake research if that was necessary. I think the committee believed that this was probably covered under the abilities of the Commission, in the current Act, but, for clarity why not make it very clear that they could do it. So we propose another amendment that would accomplish that and make it very clear that the Commission could undertake research.

So Mr. Chairman I move that clause 20 of Bill 1 be amended by renumbering subclauses (d) and (e) as subclauses (e) and (f), respectively, and by adding the following after subclause (c)

> (d) to undertake the research it considers advisable to promote human rights and to eliminate discriminatory practices that are contrary to this Act;

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Clause 20 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 21.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 22. Mr. Braden.

MR. BRADEN: Mr. Chairman I'd like to move the following motion that subclause 22(1) of Bill 1 be amended by

(a) striking out "and" at the end of subclause (a);

(b) renumbering subclause (b) as subclause (c); and

(c) adding the following after subclause (a):

> (b) appoint the employees it considers necessary to advocate for or assist a party in pursuing the remedies available to the party under this Act; and

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): OK, Mr. Braden. We have a motion on the floor. To the motion. Thank you, Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. Mr. Chairman, during the public hearings we had a number of presentations that recommended that we have an independent advocate available for people to work with when they believed they had cause to use the Human Rights Act and appear in front of the Commission to address some sort of discrimination. We know there's a concern about the cost of an independent office being set up and we are of the belief, around the committee table that as a Commission is constituted, it will be independent of government. We thought it was important that the Commission, and the members of the Commission understand that they clearly have the right to appoint someone independent or someone to help as an advocate; a party to get through the process. We didn't see this as adding to the cost. The Commission, in the Act as it is now, has the ability to appoint somebody to do this but we felt better if it was stated clearly. In the interest of costs, we didn't recommend a completely independent office. This is seen as a measure to try and deal with some of the concerns that we heard while keeping the costs reasonable and yet still having someone there to help out people in need of assistance. I just wanted to give that background to the Minister so that he was aware of why we were proposing this motion.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. To support Mr. Dent's wishes for this to be included that I think that it's something that the legislature should consider a matter of access to what is a fairly complex piece of work and for anyone who may be involved in a case of discrimination or situation like that. This is a fairly sensitive and difficult decision to make and I think committee sees that the enabling of the Commission to appoint an advocate or someone to work on behalf of people as a bridge and a way for people to have some entry into what can be a pretty complex and formidable piece of work. This really is, in the spirit of the Act, a constructive amendment to make. It is one more step that helps us assure that people do have full access and help when they need it. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Mr. Minister, you've heard the committee's reasoning for proposing this. I think also we felt anything that would facilitate the speedier resolution of compliance was something that made sense and we also saw this as being consistent with the educative function that the Commission would play. To the motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Mr. Chairman, no, I do not concur with this motion.

CHAIRMAN (Mr. Bell): Clause 22 is not amended. Clause 22 again, Mr. Dent.

MR. DENT: Mr. Chairman. Again we heard a number of times during their presentations that the Commission should be able to enter into agreements with community organizations to conduct education programs. People who have looked at the bill and it's the form that went out for public consultation, so that they were allowed to undertake contracts to work with the parties in the dispute. We heard from a number of people that the groups should also be able to work on education programs and the committee agrees with that, we are going to propose another amendment to make it clear that the Commission can do that. I move that clause 22 of Bill 1 be amended by deleting subclause (3) and by substituting the following:

(3) The Commission may from time to time enter into an agreement with a community organization in which the community organization agrees

(a) to conduct education programs

(i) designed to eliminate discriminatory practices that are contrary to this Act, or

(ii) otherwise respecting human rights; or

(b) to provide alternate dispute resolution or other services in respect of the resolution of one or more complaints filed or initiated under this Act.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 22 as amended by the latter motion?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you, committee. Clause 23.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 24.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 25.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 26

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 27.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 28.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 29.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 30. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I'd like to move the following motion that clause 30 of Bill 1 be amended by

(a) striking out, "as soon as possible after a complaint is filed or initiated," in subclause (1);

(b) striking out, "the complaint" in subclause (1) and by substituting "a complaint";

(c) renumbering subclause (2) as subclause (3); and

(d) adding the following after subclause (1);

(2) A review and inquiry into a complaint under subsection (1) must be completed as soon as possible after the complaint is filed or initiated or within such period as may be prescribed.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. The aspect of handling complaints or files that come before the Commission generated some discussion at committee. We were interested in seeing some step or some measure described in the bill. We even considered a specific period of time in days that would compel a Commission to at least signal if a complaint was going to be acted on or not. What I wanted to do here, Mr. Chairman was avoid a situation where somebody may file a complaint and it could potentially linger in question as to whether or not some action was going to be taken for an undue period of time, perhaps weeks or months. We felt that this could be detrimental not only to the person filing the complaint but those who are being complained of. If there's a accusation out there, it would seem to be in the best interest of everyone that's it's dealt with as soon as possible or at least, the process is started. We withdrew from actually proposing a specific time period. We thought this was something that should be within the discretion of the Commission, to set it's own regulations or policies, if you will. In this clause, where we see, "must be completed as soon as possible after the complaint is filed or initiated or within such a period as may be prescribed. We hope this is taken as a signal that committee and the wants due process acted on in as timely a fashion as possible. Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favor? Any opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes I concur.

CHAIRMAN (Mr. Bell): Clause 30 as amended?

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 31.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 32.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 33.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 34.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 35.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 36.

MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 37. Mr. Dent.

MR. DENT: The Minister has asked us to consider this motion they have provided to us. The committee is thinking about that, mostly it's cleaning up and making clear that searches have to conducted on the basis of a warrant having been provided or sought and granted. One thing that struck us as we were looking at it is that it also allows these warrants to be sought on an ex parte basis. I guess our question is to the Minister, is why would they?

MS. COOPER: From the consultations that we conducted, people were in favor of having the strongest search and investigatory powers that we could provide. There may be times, if you don't get to the Justice of the Peace or a Judge quickly, people may be getting rid of evidence as you are working through the process. There may a critical time and reasons why you may want to get your authority to go in and take a look at location. From my recollection there was a lot of support for as strong investigatory powers as we could provide and as efficiently as possible.

CHAIRMAN (Mr. Bell): Thank you, Ms. Cooper. Mr. Dent.

MR. DENT: I think that the committee recognizes the need for strong investigatory powers under this Act. I guess our concern is always due process and making sure that there isn't an abusive process. On balance, this committee will probably be prepared to support the Minister's request that we consider this motion. Therefore, I move that clause 37 of Bill 1 be amended,

> (a) in subclause (4), by striking out "to do so by a warrant issued under subsection (5)" and by substituting "to enter and inspect by a warrant issued under subsection (5) or to enter and search by a warrant issued under subsection (6)";
>
> (b) in subclause (5), by striking out "On application by the Director," and by substituting "On application of the Director, which may be made ex parte,";
>
> (c) in that portion of subclause (6) preceding paragraph (a), by striking out "On the ex parte application of the Director" and by substituting "On application of the Director, which may be made ex parte,"; and
>
> (d) in subclause (6)(c), by striking out "inspect" and by substituting "search".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favour? Any opposed? Seeing none, the motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes, Mr. Chairman, I do.

CHAIRMAN (Mr. Bell): Thank you. Clause 37, as amended?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Clause 38.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 39.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 40.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 41.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 42.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 43.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 44.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 45.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 46.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 47.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 48.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 49.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 50.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 51.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 52.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 53.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 54.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 55.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 56.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 57.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 58.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 59.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 60.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 61.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 62. Mr. Braden.

MR. BRADEN: Mr. Chairman, I move the following motion: That subclause 62(3)(a) of Bill 1 be amended by:

a) striking out the semi-colon at the end of subparagraph (v) of the English version and by substituting a comma;

b) renumbering subclause (vi) as subclause (vii); and

c) adding the following after subclause (v):

(vi) to reinstate in employment any party dealt with contrary to this Act,

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favour? Thank you. None opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Yes, I concur, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 62. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. The committee, during its hearings, heard from a number of submitters that they felt it would be important for the bill to incorporate the ability for exemplary damages to be awarded, and the committee has found out through its research that Canada, Saskatchewan, Manitoba, those jurisdictions all provide for exemplary damages. Ontario allows damages for mental anguish and suffering, so this is not something that is uncommon across Canada. We recognize that the goal of human rights legislation is positive and not necessarily punitive, but we think that there has to be room for exemplary damages when somebody has willfully using the act to create mischief. I am just wondering if the Minister could advise us why the department has chosen not to incorporate willful damages in the bill that is before us today.

CHAIRMAN (Mr. Bell): Mr. Minister.

HON. ROGER ALLEN: Thank you, Mr. Chairman. I will speak to my notes here, and again, one of the reasons I cannot concur with this motion is that I was not aware of it before our Cabinet meeting on October 3rd when they reviewed the issues ...(inaudible)... whether or not to provide the authority to myself as the Minister to concur with raised motions proposed by this committee. This issue will be referred to Cabinet for review before the committee of the whole on the review of Bill 1. If I may ask the assistance of my colleague to provide more clarity on this point.

-- Interjection

I retract that. I apologize. I got a little lost here. Mr. Chairman, basically, I was not authorized to concur with this motion on the...(inaudible)..., or punitive damages, sorry, so I am not prepared to concur with this motion. If I may again request the assistance of my colleague to perhaps give clarity.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Just to be clear, we do not have a motion yet, but Ms. Cooper, if you want to speak to the general idea that exemplary damages not be awarded.

MS. COOPER: In review of the other jurisdictions, it looked like some of the jurisdictions that do have exemplary damages do not have the additional...(inaudible)...of damages for injury to dignity, feelings and self-respect. So in effect, it may be duplicating damages or perhaps augmenting them. The scheme has been conceptualized as something that is not punitive in nature. If there is a flagrant violation, then there are offence provisions, so someone could be prosecuted. It is one more issue that Cabinet will be looking at a little further before this bill reaches committee of the whole, but that is the position that has been taken.

CHAIRMAN (Mr. Bell): Thank you, Ms. Cooper. Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. I am glad to hear that Cabinet is going to consider this, and having heard what we have heard, there is probably no point in making the motion that committee had planned on making, but just for the record, when we get into committee of the whole, the committee will be bringing forward a motion to incorporate willful damages awards up to $10,000 as part of the process when we get into committee of the whole. I am sure we can share that motion with the Minister so that he is fully prepared for the debate in the House, but we believe that it needs to be in the bill and will be moving to bring it forward at that time, but there is no point in making it now if we have already heard that he is not going to concur with the motion, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you. I would agree with you. We will share the motion with the Minister. Clause 62, as amended by the previous motion?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Clause 63. Mr. Braden.

MR. BRADEN: Thank you, Mr. Chairman. I make the following motion: that clause 63 of Bill 1 be deleted and the following be substituted:

63. On the adjudication of a complaint, an adjudicator may order the party responsible for the complaint or for the conduct to pay all or some of the costs of any other party where the adjudicator is satisfied that:

(a) the complaint is frivolous or vexatious;

(b) the investigation or adjudication of the complaint has been frivolously or vexatiously prolonged by the conduct of the party; or

(c) there are extraordinary reasons for making such an order in the particular case.

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favour? None opposed, the motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Thank you, Mr. Chairman. No, I do not concur with this motion.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: Thank you, Mr. Chairman. Well, again, the committee is going to continue with this, because we heard from presenters that this would be something that should be allowed. I wonder if we could ask the Minister why. Is this another issue where they have not had time to get it to Cabinet, or is this one where the Cabinet position is actually opposed to allowing costs to be awarded in extraordinary circumstances?

CHAIRMAN (Mr. Bell): Mr. Minister.

HON. ROGER ALLEN: Thank you, Mr. Chairman. I stated previously and I made the committee aware that I did not know about this before our meeting on October 3rd, so we did not have a chance to review the issues and decide whether or not to provide the authority -- there was no authority to myself to concur with this motion at that time, so again, if there needs to be further clarity, I would ask the Chair's permission to ask Ms. Cooper to respond further.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Ms. Cooper.

MS. COOPER: I can just repeat what the Minister has said, in that this was a late-coming addition from the committee. We were not aware of it until the day that the Minister was going into Cabinet to seek concurrence. It is usual to document these things before they go into Cabinet. There was no time to do that.

CHAIRMAN (Mr. Bell): Thank you, Ms. Cooper. Clause 63, not amended?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 64.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 65.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 66.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 67.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 68.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 69.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 70.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 71.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 72.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 73.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 74. Mr. Dent.

MR. DENT: Mr. Chairman, we also have a concern about timing. This relates to an amendment that we made earlier, so the committee would propose an amendment as follows:

I move that subclause 74(2)(a) of Bill 1 be amended by

(a) renumbering subclauses (i), (ii), (iii), (iv) and (v) as subclauses (ii), (iii), (iv), (v) and (vi), respectively;

(b) adding the following before renumbered subclause (ii):

  i) Within which the Director must review and inquire into a complaint in accordance with subsection 30(2)

(c) striking out "subsections 30(2)" in renumbered subclause (ii) and by substituting "subsections 30(3)".

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favour? All those opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Thank you, Mr. Chairman. Yes, I do.

CHAIRMAN (Mr. Bell): Thank you, Mr. Minister. Clause 74 as amended?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 75.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 76.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 77.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 78.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 79.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Clause 80.

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): We will return to the preamble, page 8. Mr. Braden.

MR. BRADEN: Mr. Chairman, I make the following motion to the Human Rights Act, that Bill 1 be amended by deleting the preamble and by substituting the following:

> Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
>
> And whereas it is recognized in the Northwest Territories that every individual is free and equal in dignity and rights without regard to his or her race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, marital status, family status or social condition and without regard to whether he or she has had a conviction for which a pardon has been granted;
>
> And whereas it is of vital importance to promote respect for and observance of human rights in the Northwest Territories, including the rights and freedoms protected under the Canadian Charter of

> Rights and Freedoms, and rights and freedoms protected under international human rights instruments, while at the same time promoting respect for, and the observance of, the rights and freedoms of aboriginal peoples that are recognized and affirmed under the Constitution of Canada;
>
> And whereas it is recognized that every person, having duties to others and to the community to which he or she belongs, is responsible to strive for the promotion and observance of the rights recognized in this Act;

Thank you, Mr. Chairman.

CHAIRMAN (Mr. Bell): Thank you, Mr. Braden. We have a motion on the floor. To the motion. Question has been called. All those in favour? All those opposed? The motion is carried. Mr. Minister, do you concur with the motion?

HON. ROGER ALLEN: Thank you, Mr. Chairman. Yes, we concur.

CHAIRMAN (Mr. Bell): Thank you. The preamble, as amended?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Thank you. Bill as a whole, as amended?

SOME HON. MEMBERS: Agreed.

CHAIRMAN (Mr. Bell): Mr. Dent.

MR. DENT: Mr. Chairman, I move that Bill 1, the Human Rights Act, be reprinted as amended and reported to the Assembly as ready for committee of the whole.

CHAIRMAN (Mr. Bell): Thank you, Mr. Dent. We have a motion on the floor. To the motion. Question has been called. All those in favour? All those opposed? The motion is carried. Thank you, Mr. Minister, for your attendance here today. That concludes our public review of Bill 1, and the clause-by-clause with Minister Allen. Thank you all for your attendance.

-- ADJOURNMENT

APPENDIX "B"

Written Submissions on Bill 1, *Human Rights Act*, were received from:

Terry Rideout, Hay River, NT
Lewis Beck, Wrigley, NT
Union of Northern Workers, Yellowknife, NT
Edward Collinson, Hay River, NT
James R. Posynick, Yellowknife, NT
Status of Women Council of the NWT, Yellowknife, NT